TITLE 10—ARMED FORCES

This title was enacted by act Aug. 10, 1956, ch. 1041, § 1, 70A Stat. 1

Subtitle A—General Military Law

PART III—TRAINING

Chap.		Sec.
106.	Educational Assistance for Enlisted Members of the Selected Reserve of the Ready Reserve	2131

AMENDMENTS

1977—Pub. L. 95-79, title IV, § 402(b), July 30, 1977, 91 Stat. 330, added item 106.

PART I—ORGANIZATION AND GENERAL MILITARY POWERS

CHAPTER 1—DEFINITIONS

§ 101. Definitions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 14 section 438; title 18 section 232; title 33 section 857-1; title 39 section 3401; title 42 section 7235.

CHAPTER 4—DEPARTMENT OF DEFENSE

Sec.

134. Deputy Secretary of Defense: appointment; powers and duties; precedence.

135. Under Secretaries of Defense: appointment; powers and duties; precedence.

AMENDMENTS

1977—Pub. L. 95-140, §§ 1(b), 2(b), Oct. 21, 1977, 91 Stat. 1172, 1173, substituted "Deputy Secretary" for "Deputy Secretaries" in item 134 and "Under Secretaries of Defense" for "Director of Defense Research and Engineering" in item 135.

§ 131. Executive department

READINESS STATUS OF MILITARY FORCES OF THE NORTH ATLANTIC TREATY ORGANIZATION; ASSESSMENT, FINDINGS, AND REPORT TO CONGRESSIONAL COMMITTEES

Pub. L. 96-107, title VIII, § 808, Nov. 9, 1979, 93 Stat. 814, provided that:

"(a) Each year the Secretary of Defense shall assess, and make findings with respect to, the readiness status of the military forces of the North Atlantic Treaty Organization and shall submit a report of such assessment and findings to the Committees on Armed Services and on Appropriations of the Senate and House of Representatives on the same date that the President transmits to the Congress the Budget. The first such report shall be submitted on the date the Budget for fiscal year 1981 is transmitted.

"(b) The annual assessment by the Secretary of Defense under subsection (a) shall include the assessment and findings of the Secretary of Defense with respect to—

"(1) deficiencies in the readiness of the North Atlantic Treaty Organization (including an analysis of such deficiencies in each member nation of the North Atlantic Treaty Organization) with respect to—

"(A) war reserve stocks;

"(B) command, control, and communications systems (including the susceptibility of such systems to degradation by potential overt activities of the Warsaw Pact);

"(C) electronic warfare capabilities;

"(D) offensive and defensive chemical warfare capabilities;

"(E) air defense capabilities (including ground and air systems and the integration of ground systems with air systems);

"(F) armor and anti-armor capabilities;

"(G) firepower capabilities;

"(H) forward deployed units and the proximity of such units to assigned general defensive positions;

"(I) the availability of ammunition;

"(J) the availability, responsiveness, and overall effectiveness of reserve forces;

"(K) airlift capabilities to meet reinforcement and resupply requirements;

"(L) the ability to protect, cross-service, and stage air assets from allied air fields;

"(M) the maritime force capabilities (including sealift, minelaying, and minesweeping capabilities);

"(N) logistical support arrangements (including the availability of ports, air fields, transportation, and host nation support);

"(O) training (including the availability of the facilities and equipment needed to conduct realistic operational exercises); and

"(P) the compatibility of operational doctrine and procedures among armed forces of the member nations;

"(2) planned corrections in the identified readiness deficiencies of the United States with respect to the North Atlantic Treaty Organization and that portion of the Budget transmitted to the Congress by the President on the date such report is transmitted which is allocated for such corrections; and

"(3) commitments made by other member nations of the North Atlantic Treaty Organization to correct readiness deficiencies of such nations (including any deficiencies of such nations in the items listed in paragraph (1)) and an identification of particular improvements to be made in readiness by weapons system, program, or activity."

CEILINGS ON COMMISSIONED OFFICERS ON ACTIVE DUTY AND CIVILIANS EMPLOYED BY DEPARTMENT OF DEFENSE

Pub. L. 95-79, title VIII, § 811(a), July 30, 1977, 91 Stat. 335, as amended by Pub. L. 96-107, title VIII, § 817, Nov. 9, 1979, 93 Stat. 818, provided that:

"(1) After October 1, 1980, the total number of commissioned officers on active duty in the Army, Air Force, and Marine Corps above the grade of colonel, and on active duty in the Navy above the grade of captain, may not exceed 1,073.

"(2) After September 30, 1981, the total number of civilian employees of the Department of Defense in grades GS-13 through GS-18 (including positions authorized under section 1581 of title 10, United States

Code) may not exceed the number equal to the number of such employees employed by the Department of Defense on July 30, 1977, reduced by the same percentage as the percentage by which the total number of commissioned officers on active duty in the Army, Air Force, and Marine Corps above the grade of colonel, and on active duty in the Navy above the grade of captain, is reduced below 1,141 during the period beginning on October 1, 1977, and ending on September 30, 1980."

EX. ORD. NO. 12049. DEFENSE ECONOMIC ADJUSTMENT PROGRAMS

Ex. Ord. No. 12049, Mar. 27, 1978, 43 F.R. 13363, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

By virtue of the authority vested in me as President by the Constitution of the United States of America, in order to provide coordinated Federal economic adjustment assistance necessiated by changes in Department of Defense activities, it is hereby ordered as follows:

SECTION 1. *Functions of the Secretary of Defense*

(a) The Secretary shall, through the Economic Adjustment Committee, design and establish an Economic Adjustment Program to assist in the alleviation of serious economic and social impacts that result from major Defense realignments. The program shall provide for:

1. Identification of Defense-related impact problems of States, metropolitan areas, or communities that require assistance.

2. Preparation of development strategies and action plans to coordinate Federal, State and local economic adjustment efforts.

3. Strengthened and uniform economic impact analysis and analysis of community requirements for Federal economic adjustment resources, prior to base realignment action.

4. Timely and earliest possible consultation and cooperation with local, State and Federal officials concerning impact problems and coordinated interagency and intergovernmental adjustment assistance.

5. A clearinghouse service to exchange information among Federal, State and local officials involved in the resolution of community adjustment problems; e.g., previous studies, technical information, and sources of public and private financing.

6. Application of consistent policies, practices, and procedures in the administration of Federal programs that are utilized to assist Defense impact communities.

7. Encouragement of effective State and regional cooperation and concerted involvement of public interest groups and private sector organizations in Defense adjustment activities.

8. Development, with representatives of appropriate agencies, of uniform criteria for the determination of social economic impact of a particular realignment.

9. Identification and strengthening of existing agency mechanisms to better coordinate employment opportunities for displaced agency personnel.

10. Increased attractiveness to the private sector of interim usage of lands and buildings and ways of streamlining property disposal procedures to enable impacted communities to acquire base property for job-generation purposes as military activities phase down.

(b) The Secretary of Defense shall ensure that sufficient resources and personnel are allocated to carry out these functions.

SEC. 2. *Economic Adjustment Committee*

(a) The Economic Adjustment Committee is hereby continued.

(b) The Committee shall be composed of the following, or a principal deputy, and such others as the President may designate:

(1) The Secretary of Defense, who shall be the Chairman of the Committee.

(2) The Secretary of Agriculture.

(3) The Secretary of Commerce.

(4) The Secretary of Energy.

(5) The Secretary of Health, Education, and Welfare.

(6) The Secretary of Housing and Urban Development.

(7) The Secretary of the Interior.

(8) The Secretary of Labor.

(9) The Secretary of Transportation.

(10) The Attorney General.

(11) The Chairman, Council of Economic Advisers.

(12) The Director of the Office of Management and Budget.

(13) The Director of the United States Arms Control and Disarmament Agency.

(14) The Administrator of the Environmental Protection Agency.

(15) The Director of the Community Services Administration.

(16) The Administrator of General Services.

(17) The Administrator of the Small Business Administration.

(18) The Director of the Office of Personnel Management.

(c) The Committee shall advise, assist, and support the Secretary of Defense's Economic Adjustment activities.

(d) The Secretary of Defense shall provide all necessary administrative support for the Committee.

SEC. 3. *Responsibility of Executive Agencies*

(a) The head of each agency represented on the Economic Adjustment Committee shall designate a permanent representative to: (1) serve as liaison with the Secretary of Defense's economic adjustment staff, (2) coordinate agency support and participation in assistance projects, and (3) assist in resolving community impact problems.

(b) All Executive agencies shall:

(1) Support, to the extent permitted by law, the economic adjustment assistance activities of the Secretary of Defense. Such support shall include the use and application of personnel, technical expertise, legal authorities, and available financial resources to the extent required to provide a coordinated Federal response to the needs of individual communities, States, and regions adversely affected by necessary Defense changes.

(2) Afford priority consideration to community requests for Federal technical assistance, financial resources, excess or surplus property, or other requirements that are part of a comprehensive plan used by the Economic Adjustment Committee.

SEC. 4. *Construction*

Nothing in this Order shall be construed as subjecting any function vested by law in, or assigned pursuant to law to, any agency or head thereof to the authority of any other agency or officer or as abrogating or restricting any such function in any manner.

JIMMY CARTER.

§ 133. Secretary of Defense: appointment; powers and duties; delegation by

REPORT TO CONGRESS ON SALE OR TRANSFER OF DEFENSE ARTICLES

Pub. L. 94-106, title VIII, § 813, Oct. 7, 1975, 89 Stat. 540, as amended by Pub. L. 95-79, title VIII, § 814, July 30, 1977, 91 Stat. 337, provided that:

"In the case of any letter of offer to sell or any proposal to transfer defense articles which are valued at $25,000,000 or more from the United States active forces' inventories or from current production, the Secretary of Defense shall submit a report to the Congress setting forth—

"(1) the impact of such sales or transfers on the current readiness of United States forces;

"(2) the adequacy of reimbursements to cover, at the time of replenishment of United States inventories, the full replacement costs of those items sold or transferred; and

"(3) for each article to be sold (A) the initial issue quantity requirement for United States forces for that article, (B) the percentage of such requirement already delivered to such forces or contracted for at the time of the report, (C) the timetable for meeting such requirement absent the proposed sale, and (D) the timetable for meeting such requirement if the sale is approved."

§ 134. Deputy Secretary of Defense: appointment; powers and duties; precedence

(a) There is a Deputy Secretary of Defense, appointed from civilian life by the President, by and with the advice and consent of the Senate. A person may not be appointed as Deputy Secretary of Defense within ten years after relief from active duty as a commissioned officer of a regular component of an armed force.

(b) The Deputy Secretary shall perform such duties and exercise such powers as the Secretary of Defense may prescribe. The Deputy Secretary shall act for, and exercise the powers of, the Secretary when the Secretary is disabled or there is no Secretary of Defense.

(c) The Deputy Secretary takes precedence in the Department of Defense immediately after the Secretary.

(As amended Pub. L. 95-140, § 1(a), Oct. 21, 1977, 91 Stat. 1172.)

AMENDMENTS

1977—Pub. L. 95-140, § 1(a)(4), substituted in section catchline "Deputy Secretary" for "Deputy Secretaries".

Subsec. (a). Pub. L. 95-140, § 1(a)(1), substituted "There is a Deputy Secretary" for "There are two Deputy Secretaries" and struck out "a" before "Deputy Secretary".

Subsec. (b). Pub. L. 95-140, § 1(a)(2), substituted "Deputy Secretary" for "Deputy Secretaries" and "Deputy Secretary" for "Deputy Secretaries, in the order of precedence, designated by the President".

Subsec. (c). Pub. L. 95-140, § 1(a)(3), substituted "The Deputy Secretary takes" for "The Deputy Secretaries take".

§ 135. Under Secretaries of Defense: appointment; powers and duties; precedence

(a) There are two Under Secretaries of Defense, one of whom shall be the Under Secretary of Defense for Policy and one of whom shall be the Under Secretary of Defense for Research and Engineering. The Under Secretaries of Defense shall be appointed from civilian life by the President, by and with the advice and consent of the Senate. A person may not be appointed Under Secretary of Defense for Policy within ten years after relief from active duty as a commissioned officer of a regular component of an armed force.

(b) The Under Secretary of Defense for Policy shall perform such duties and exercise such powers as the Secretary of Defense may prescribe. The Under Secretary of Defense for Research and Engineering shall perform such duties relating to research and engineering as the Secretary of Defense may prescribe, including—

[*See main edition for text of (1) to (3)*]

(c) The Under Secretary of Defense for Policy takes precedence in the Department of Defense after the Secretary of Defense, the Deputy Secretary of Defense, and the Secretaries of the military departments. The Under Secretary of Defense for Research and Engineering takes precedence in the Department of Defense immediately after the Under Secretary of Defense for Policy.

(As amended Pub. L. 95-140, § 2(a), Oct. 21, 1977, 91 Stat. 1172.)

AMENDMENTS

1977—Pub. L. 95-140, § 2(a)(4), substituted in section catchline "Under Secretaries of Defense" for "Director of Defense Research and Engineering".

Subsec. (a). Pub. L. 95-140, § 2(a)(1), substituted provisions relating to the appointment of the Under Secretary of Defense for Policy and the Under Secretary of Defense for Research and Engineering for provisions relating to the appointment of the Director of Defense Research and Engineering and added provisions relating to the prohibition of the appointment of a person as Under Secretary of Defense for policy within ten years after relief from active duty as a commissioned officer of an armed force.

Subsec. (b). Pub. L. 95-140, § 2(a)(2), substituted "The Under Secretary of Defense for Policy shall perform such duties and exercise such powers as the Secretary of Defense may prescribe. The Under Secretary of Defense for Research and Engineering shall perform" for "The Director performs".

Subsec. (c). Pub. L. 95-140, § 2(a)(3), substituted "Under Secretary of Defense for Policy" for "Director" and "Deputy Secretary" for "Deputy Secretaries" and added provision that the Under Secretary of Defense for Research and Engineering takes precedence in the Department of Defense immediately after the Under Secretary of Defense for Policy.

§ 136. Assistant Secretaries of Defense: appointment; powers and duties; precedence

(a) There are seven Assistant Secretaries of Defense, appointed from civilian life by the President, by and with the advice and consent of the Senate.

[*See main edition for text of (b) to (d)*]

(e) The Assistant Secretaries take precedence in the Department of Defense after the Secretary of Defense, the Deputy Secretary of Defense, the Secretaries of the military departments, and the Under Secretaries of Defense.

[*See main edition for text of (f)*]

(As amended Pub. L. 95-140, § 3(a), Oct. 21, 1977, 91 Stat. 1173; Pub. L. 96-107, title VIII, § 820(a), Nov. 9, 1979, 93 Stat. 819.)

AMENDMENTS

1979—Subsec. (a). Pub. L. 96-107 substituted "seven" for "nine".

1977—Subsec. (e). Pub. L. 95-140 inserted "of Defense" following "Secretary" and substituted "Secretary of Defense" for "Secretaries of Defense" and ", and the Under Secretaries of Defense" for ", and the Director of Defense Research and Engineering".

§ 138. Secretary of Defense: Annual authorization of appropriations for armed forces

[*See main edition for text of (a) and (b)*]

(c) [*See main edition for text of (1) and (2)*] (3)(A) The Secretary of Defense shall submit to Congress a written report, not later than

February 15 of each fiscal year, recommending the annual active duty end strength level for each component of the armed forces for the next fiscal year and the annual civilian personnel end strength level for each component of the Department of Defense for the next fiscal year, and shall include in that report justification for the strength levels recommended and an explanation of the relationship between the personnel strength levels recommended for that fiscal year and the national security policies of the United States in effect at the time. The justification and explanation shall specify in detail for all military forces (including each land force division, carrier and other major combatant vessel, air wing, and other comparable unit) the—

(i) unit mission and capability;

(ii) strategy which the unit supports; and

(iii) area of deployment and illustrative areas of potential deployment, including a description of any United States commitment to defend such areas.

(B) The Secretary of Defense shall also include in the report required under subparagraph (A) a detailed discussion of—

(i) the manpower required for support and overhead functions within the armed forces and the Department of Defense;

(ii) the relationship of the manpower required for support and overhead functions to the primary combat missions and support policies; and

(iii) the manpower required to be stationed or assigned to duty in foreign countries and aboard vessels located outside the territorial limits of the United States, its territories, and possessions.

(C) In such report, the Secretary of Defense shall also identify, define, and group by mission and by region the types of military bases, installations, and facilities and shall provide an explanation and justification of the relationship between this base structure and the proposed military force structure together with a comprehensive identification of base operating support costs and an evaluation of possible alternatives to reduce such costs.

(D) The Secretary of Defense shall also include in such report with respect to each armed force under the jurisdiction of the Secretary of a military department—

(i) the estimated requirements in members on active duty during the next fiscal year;

(ii) the estimated number of commissioned officers in each grade on active duty and to be promoted during the next fiscal year; and

(iii) an analysis of the distribution by grade of commissioned officers on active duty at the time the report is prepared.

[See main edition for text of (d) and (e)]

(As amended Pub. L. 96-107, title III, § 303(b), Nov. 9, 1979, 93 Stat. 806.)

AMENDMENTS

1979—Subsec. (c)(3). Pub. L. 96-107 restructured existing provisions into subpars. (A) to (C) with minor changes in phraseology, and added subpar. (D).

WAIVER OF APPLICABILITY OF OMB CIRCULAR A-76 TO CONTRACTING OUT OF CERTAIN RESEARCH AND DEVELOPMENT ACTIVITIES

Section 802 of Pub. L. 96-107 provided that:

"(a) Except as provided in subsection (b), neither the implementing instructions for, nor the provisions of, Office of Management and Budget Circular A-76 (issued on August 30, 1967, and reissued on October 18, 1976, June 13, 1977, and March 29, 1979) shall control or be used for policy guidance for the obligation or expenditure of any funds which under section 138(a)(2) of title 10, United States Code, are required to be specifically authorized by law.

"(b) Funds which under section 138(a)(2) of title 10, United States Code, are required to be specifically authorized by law may be obligated or expended for operation or support of installations or equipment used for research and development (including maintenance support of laboratories, operation and maintenance of test ranges, and maintenance of test aircraft and ships) in compliance with the implementing instructions for and the provisions of such Office of Management and Budget Circular.

"(c) No law enacted after the date of the enactment of this Act [November 9, 1979] shall be held, considered, or construed as amending, superseding, or otherwise modifying any provision of this section unless such law does so by specifically and explicitly amending, repealing, or superseding this section."

§ 139. Secretary of Defense: weapons development and procurement schedules for armed forces; reports; supplemental reports

DEVELOPMENT OF MX MISSILE SYSTEM

Pub. L. 96-29, title II, § 202, June 27, 1979, 93 Stat. 79, provided that:

"(a) It is the sense of the Congress that maintaining a survivable land-based intercontinental ballistic missile system is vital to the security of the United States and that development of a new basing mode for land-based intercontinental ballistic missiles is necessary to assure the survivability of the land-based system. To this end, the development of the MX missile, together with a new basing mode for such missile, should proceed so as to achieve Initial Operational Capability (IOC) for both such missile and such basing mode at the earliest practicable date.

"(b) In addition, it is the sense of the Congress that the basing mode for the MX missile should be restricted to location on the least productive land available that is suitable for such purpose.

"(c) In accordance with the sense of Congress expressed in subsection (a), the Secretary of Defense shall proceed immediately with full scale engineering development of the missile basing mode known as the Multiple Protective Structure (MPS) system concurrently with full scale engineering development of the MX missile, unless and until the Secretary of Defense certifies to the Congress that an alternative basing mode is militarily or technologically superior to, and is more cost effective than, the MPS system or the President informs the Congress that in his view the MPS system is not consistent with United States national security interests.

"(d) Nothing in this section shall be construed to prohibit or restrict the study of alternative basing modes for land-based intercontinental ballistic missiles."

REPORTS TO CONGRESS OF ACQUISITIONS FOR MAJOR DEFENSE SYSTEMS

Section 811 of Pub. L. 94-106, as amended by Pub. L. 96-107, title VIII, § 809, Nov. 9, 1979, 93 Stat. 815, provided that:

"(a) Beginning with the quarter ending December 31, 1979, the Secretary of Defense shall submit quarterly to the Congress written selected acquisition reports for those major defense systems which are esti-

mated to require a total cumulative financing for research, development, test, and evaluation in excess of $75,000,000 or a cumulative production investment in excess of $300,000,000. The report for the quarter ending on December 31 of any fiscal year shall be submitted within 20 days after the President transmits the Budget to the Congress for the following fiscal year, and the reports for the other three quarters of any fiscal year shall be submitted within 30 days after the end of the quarter. If a preliminary report is submitted for any quarter, then the final report for such quarter shall be submitted to the Congress within 15 days after the submission of such preliminary report.

[*See main edition for text of* (b)]

CHAPTER 5—JOINT CHIEFS OF STAFF

§ 141. Composition; functions

(a) There are in the Department of Defense the Joint Chiefs of Staff consisting of—

(1) a Chairman;

(2) the Chief of Staff of the Army;

(3) the Chief of Naval Operations;

(4) the Chief of Staff of the Air Force; and

(5) the Commandant of the Marine Corps.

(b) The Joint Chiefs of Staff are the principal military advisers to the President, the National Security Council, and the Secretary of Defense.

(c) Subject to the authority and direction of the President and the Secretary of Defense, the Joint Chiefs of Staff shall—

(1) prepare strategic plans and provide for the strategic direction of the armed forces;

(2) prepare joint logistic plans and assign logistic responsibilities to the armed forces in accordance with those plans;

(3) establish unified commands in strategic areas;

(4) review the major material and personnel requirements of the armed forces in accordance with strategic and logistic plans;

(5) formulate policies for the joint training of the armed forces;

(6) formulate policies for coordinating the military education of members of the armed forces;

(7) provide for representation of the United States on the Military Staff Committee of the United Nations in accordance with the Charter of the United Nations; and

(8) perform such other duties as the President or the Secretary of Defense may prescribe.

(d) After first informing the Secretary of Defense, a member of the Joint Chiefs of Staff may make such recommendations to Congress relating to the Department of Defense as he may consider appropriate.

(As amended Oct. 20, 1978, Pub. L. 95-485, title VIII, § 807, 92 Stat. 1622.)

AMENDMENTS

1978—Subsec. (a)(5). Pub. L. 95-485, § 807(1) to (3), added subsec. (a)(5).

Subsec. (c). Pub. L. 95-485, § 807(4), (5), redesignated former subsec. (d) as (c). Former subsec. (c), which authorized the Commandant of the Marine Corps to indicate to the Chairman of the Joint Chiefs of Staff any matter that directly concerned the Marine Corps and to meet with the Joint Chiefs, as a co-equal member, when that matter was under consideration, was struck out.

Subsec. (d). Pub. L. 95-485, § 807(5), redesignated former subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 95-485, § 807(5), redesignated subsec. (e) as (d).

§ 142. Chairman

(a) The Chairman of the Joint Chiefs of Staff shall be appointed by the President, by and with the advice and consent of the Senate, from the officers of the regular components of the armed forces. He serves at the pleasure of the President for a term of two years, and may be reappointed in the same manner for one additional term. However, in time of war declared by Congress there is no limit on the number of reappointments.

[*See main edition for text of* (b) *and* (c)]

CODIFICATION

Subsec. (a) of this section is set out in this supplement to correct a typographical error appearing in the main edition.

CHAPTER 7—BOARDS, COUNCILS, AND COMMITTEES

§ 171. Armed Forces Policy Council

(a) There is in the Department of Defense an Armed Forces Policy Council consisting of—

[*See main edition for text of* (1)]

(2) the Deputy Secretary of Defense;

[*See main edition for text of* (3) *to* (5)]

(6) the Under Secretaries of Defense;

[*See main edition for text of* (7) *to* (10); (b)]

(As amended Oct. 21, 1977, Pub. L. 95-140, § 3(b), 91 Stat. 1173.)

AMENDMENTS

1977—Subsec. (a)(2). Pub. L. 95-140, § 3(b)(1), substituted "the Deputy" for "a Deputy".

Subsec. (a)(6). Pub. L. 95-140, § 3(b)(2), substituted "the Under Secretaries of Defense;" for "the Director of Defense Research and Engineering;".

§ 176. Armed Forces Institute of Pathology

CHANGE OF NAME

Officials of the Department of Health, Education, and Welfare were redesignated officials of the Department of Health and Human Services by section 3508 of Title 20, Education.

CHAPTER 11—RESERVE COMPONENTS

Sec.

[279. Repealed].

AMENDMENTS

1978—Pub. L. 95-485, title IV, § 406(b)(2), Oct. 20, 1978, 92 Stat. 1616, struck out item 279, which read "Training reports".

§ 264. Reserve affairs: designation of general or flag officer of each military department; personnel and logistic support for reserves; reports to Congress

[*See main edition for text of* (a) *and* (b)]

[(c) Repealed. Pub. L. 95-485, title IV, § 406(a), Oct. 20, 1978, 92 Stat. 1616.]

(As amended Oct. 20, 1978, Pub. L. 95-485, title IV, § 406(a), 92 Stat. 1616.)

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-485 struck out subsec. (c), which required the Secretary concerned to submit a written report to the Committees on Armed Services of the Senate and House of Representatives concerning the extent to which units and reserves in the Ready Reserve satisfied the training and mobilization requirements of subsec. (b) for the year in which the report was submitted.

§ 269. Ready Reserve: placement in; transfer from

(a) Each person required under law to serve in a reserve component shall, upon becoming a member, be placed in the Ready Reserve of his armed force for his prescribed term of service, unless he is transferred to the Standby Reserve under subsection (e).

[See main edition for text of (b) and (c)]

(d) Under such regulations as the Secretary concerned may prescribe, any qualified Reserve may, upon his request, be placed in the Ready Reserve. However, a member of the Retired Reserve who is entitled to retired pay may not be placed in the Ready Reserve unless the Secretary concerned makes a special finding that the member's services in the Ready Reserve are indispensable. The Secretary concerned may not delegate his authority under the preceding sentence.

(e) Subject to subsection (g) and under regulations prescribed by the Secretary of Defense, and by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, a member in the Ready Reserve may be transferred to the Standby Reserve.

(f) A Reserve who is qualified and so requests may be transferred to the Retired Reserve under regulations prescribed by the Secretary concerned and, in the case of the Secretary of a military department, approved by the Secretary of Defense.

[See main edition for text of (g)]

(As amended Oct. 20, 1978, Pub. L. 95-485, title IV, § 405(a)(1), 92 Stat. 1615.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-485, § 405(a)(1)(A), substituted "transferred" for "eligible to transfer".

Subsec. (d). Pub. L. 95-485, § 405(a)(1)(B), substituted "sentence." for "sentence:".

Subsec. (e). Pub. L. 95-485, § 405(a)(1)(C), substituted provision permitting transfer from the Ready Reserve to the Standby Reserve subject to subsec. (g) and regulations as prescribed by the Secretary of Defense or Secretary of Transportation with respect to the Coast Guard when not operating as a service in the Navy for provision permitting transfer to the Standby Reserve, except in time of war or national emergency declared by Congress, of a Reserve who was not on active duty, or who was on active duty for training, provided he complied with certain active duty requirements and provided there was no agreement to remain in the Ready Reserve.

Subsec. (f). Pub. L. 95-485, § 405(a)(1)(D), substituted provision permitting a Reserve who is qualified and so requests to be transferred to the Retired Reserve for provision permitting a member of the Ready Reserve, subject to subsec. (g), to be transferred to the Standby Reserve or if he was qualified and so requested to the Retired Reserve.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 405(a)(2) of Pub. L. 95-485 provided that: "The amendments made by paragraph (1) [amending this section] shall not apply with respect to a member of the Ready Reserve of an Armed Force who served on active duty (other than for training) before the date of the enactment of this Act [Oct. 20, 1978]."

§ 271. Ready Reserve: continuous screening

(a) Under regulations to be prescribed by the President, each armed force shall provide a system of continuous screening of units and members of the Ready Reserve to insure that—

(1) there will be no significant attrition of those members or units during a mobilization;

[See main edition for text of (2) to (5)]

(b) Under regulations to be prescribed by the Secretary of Defense, and by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, any member of the Ready Reserve who is designated as a member not to be retained in the Ready Reserve as a result of screening under subsection (a) shall, as appropriate, be transferred to the Standby Reserve, discharged, or, if such member is eligible and applies therefor, transferred to the Retired Reserve.

(As amended Pub. L. 95-485, title IV, § 405(b), Oct. 20, 1978, 92 Stat. 1615.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-485, § 405(b)(1), (2), designated existing provision as subsec. (a) and in cl. (1) of subsec. (a), as so designated, substituted "significant" for "significance".

Subsec. (b). Pub. L. 95-485, § 405(b)(3), added subsec. (b).

[§ 279. Repealed. Pub. L. 95-485, title IV, § 406(b)(1), Oct. 20, 1978, 92 Stat. 1616]

Section, added Pub. L. 85-861, § 1(5)(C), Sept. 2, 1958, 72 Stat. 1439, and amended Pub. L. 94-273, § 11(2), Apr. 21, 1976, 90 Stat. 378, required the Secretary of Defense to report to the President and Congress, in January of each year, on the status of training of each reserve component and the progress made in strengthening the reserve components during the preceding fiscal year.

§ 280. Regulations

Subject to standards, policies, and procedures prescribed by the Secretary of Defense, the Secretary of each military department shall prescribe such regulations as he considers necessary to carry out chapters 11, 35, 39, and 59, and sections 715, 1003, 1004, 1376, 2001, 2511, 3077, 3079, 3221, 3224, 3259, 3260, 3261, 3351, 3352, 3354, 3495, 3498, 3685, 3686, 5251, 5252, 5456, 5597, 6327, 6483, 7225, 7226, 7854, 8077, 8079, 8221, 8224, 8259, 8260, 8261, 8351, 8352, 8354, 8495, 8498, 8685, and 8686 of this title. The Secretary of the Treasury, with the concurrence of the Secretary of the Navy, shall prescribe such regulations as he considers nec-

essary to carry out chapters 11, 35, 39, and 59, and sections 715, 1003, 1004, 1376, 2001, and 2511 of this title, so far as they relate to the Coast Guard, except when the Coast Guard is operating as a service in the Navy. So far as practicable, regulations for all reserve components shall be uniform.

(As amended Aug. 17, 1977, Pub. L. 95-105, title V, § 509(d)(3), 91 Stat. 860.)

AMENDMENTS

1977—Pub. L. 95-105 eliminated references to section 1032 of this title.

PART II—PERSONNEL

CHAPTER 31—ENLISTMENTS

§ 504. Persons not qualified

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 802 of this title.

§ 505. Regular components: qualifications, term, grade

[See main edition for text of (a) to (c)]

(d) The Secretary concerned may accept reenlistments in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard, as the case may be, for period of two, three, four, five, or six years. No enlisted member is entitled to be reenlisted for a period that would expire before the end of his current enlistment.

(As amended Pub. L. 95-485, title VIII, § 820(a), Oct. 20, 1978, 92 Stat. 1627.)

AMENDMENTS

1978—Subsec. (d). Pub. L. 95-485 redesignated former subsec. (e) as (d). Former subsec. (d), which provided that in the Regular Army female persons may be enlisted only in the Women's Army Corps, was struck out.

Subsec. (e). Pub. L. 95-485 redesignated subsec. (e) as (d).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 519, 802 of this title.

§ 511. Reserve components: terms

[See main edition for text of (a)]

(b) Under regulations to be prescribed by the Secretary of Defense, and by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, a person who is qualified for enlistment for active duty in an armed force, and who is not under orders to report for induction into an armed force under the Military Selective Service Act (50 U.S.C. App. 451-473), may be enlisted as a Reserve for service in the Army Reserve, Naval Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve, for a term of six years. Each person enlisted under this subsection shall serve—

(1) on active duty for a period of not less than two years; and

(2) the rest of his period of enlistment as a member of the Ready Reserve.

[See main edition for text of (c)]

(d) Under regulations to be prescribed by the Secretary of Defense, or the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, a non-prior-service person who is qualified for induction for active duty in an armed force and who is not under orders to report for induction into an armed force under the Military Selective Service Act of 1967 (50 App. U.S.C. 451-473), except as provided in section 6(c)(2)(A)(ii) and (iii) of such Act, may be enlisted in the Army National Guard or the Air National Guard, or as a Reserve for service in the Army Reserve, Naval Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve, for a term of six years. Each person enlisted under this subsection shall perform an initial period of active duty for training of not less than twelve weeks to commence insofar as practicable within 180 days after the date of that enlistment.

(As amended Oct. 20, 1978, Pub. L. 95-485, title IV, § 405(c)(1), 92 Stat. 1615; Nov. 9, 1979, Pub. L. 96-107, title VIII, § 805(a), 93 Stat. 812.)

REFERENCES IN TEXT

The Military Selective Service Act (50 U.S.C. App. 451-473), referred to in subsec. (b), is act June 24, 1948, ch. 625, 62 Stat. 204, as amended, which is classified principally to section 451 et seq. of Title 50, App., War and National Defense. For complete classification of this Act to the Code, see References in Text note set out under section 451 of Title 50 App. and Tables.

AMENDMENTS

1979—Subsec. (d). Pub. L. 96-107 struck out requirement that a non-prior-service person be under 26 years of age.

1978—Subsec. (b). Pub. L. 95-485, in provision preceding cl. (1), substituted "the Secretary of Defense, and by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy" for "the Secretary concerned" and "the Military Selective Service Act (50 U.S.C. App. 451-473)" for "sections 451-473 of title 50, appendix", in cl. (1), substituted "not less than two years; and" for "two years;", struck out former cl. (2), requiring a person enlisted under this subsec. to serve satisfactorily as a member of the Ready Reserve for a period which when added to his active duty under cl. (1) totals five years, redesignated former cl. (3) as (2), and in cl. (2) as so redesignated, substituted "Ready Reserve" for "Standby Reserve".

EFFECTIVE DATE OF 1979 AMENDMENT

Section 805(c) of Pub. L. 96-107 provided that: "The amendments [to sections 511 and 651 of this title] made by this section shall apply only to individuals who become members of an Armed Force after the date of the enactment of this Act [November 9, 1979]."

EFFECTIVE DATE OF 1978 AMENDMENT

Section 405(c)(2) of Pub. L. 95-485 provided that: "The amendments made by paragraph (1) [amending this section] shall not apply with respect to a person who enlisted as a Reserve for service in the Armed Forces under section 511(b) of title 10, United States Code, before the date of the enactment of this Act [Oct. 20, 1978]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 2108; title 14 section 765; title 38 sections 1602, 1652, 1701; title 50 App. section 456.

CHAPTER 33—APPOINTMENTS IN REGULAR COMPONENTS

§ 555. Warrant officers: grades

(a) The regular warrant officer grades in each armed force corresponding to the pay grades prescribed for warrant officers by section 201(c) of title 37 are as follows:

Warrant officer grade:
Chief warrant officer, W–4
Chief warrant officer, W–3
Chief warrant officer, W–2
Warrant officer, W–1

[*See main edition for text of* (b)]

(As amended July 30, 1977, Pub. L. 95–79, title III, § 302(a)(4), 91 Stat. 326.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95–79 substituted "201(c)" for "201(d)".

CHAPTER 37—GENERAL SERVICE REQUIREMENTS

Sec.
652. Ready Reserves: requirement of notification of change of status.

AMENDMENTS

1978—Pub. L. 95–485, title IV, § 405(d)(2), Oct. 20, 1978, 92 Stat. 1616, added item 652.

§ 651. Members: required service

(a) Each person who becomes a member of an armed force, other than a person deferred under the next to the last sentence of section 456(d)(1) of title 50, appendix, shall serve in the armed forces for a total of six years, unless he is sooner discharged because of personal hardship under regulations prescribed by the Secretary of Defense or, if he is a member of the Coast Guard while it is not operating as a service in the Navy, by the Secretary of the Treasury. Any part of such service that is not active duty or is active duty for training shall be performed in a reserve component.

[*See main edition for text of* (b)]

(As amended July 30, 1977, Pub. L. 95–79, title VIII, § 803(a), 91 Stat. 333; Nov. 9, 1979, Pub. L. 96–107, title VIII, § 805(b), 93 Stat. 813.)

AMENDMENTS

1979—Subsec. (a). Pub. L. 96–107 struck out "before his twenty-sixth birthday" following "force".

1977—Subsec. (a). Pub. L. 95–79 struck out "male" following "Each" and "after August 9, 1955," following "who".

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–107 applicable to individuals who become members of an Armed Force after Nov. 9, 1979, see section 805(c) of Pub. L. 96–107, set out as an Effective Date of 1979 Amendment note under section 511 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 803(b) of Pub. L. 95–79 provided that: "The amendments made by subsection (a) [amending subsec. (a) of this section] shall take effect on the first day of the seventh calendar month beginning after the month in which this Act is enacted [July 1977] and shall apply to any female person who becomes a member of an Armed Force on or after such day."

§ 652. Ready Reserves: requirement of notification of change of status

Under regulations to be prescribed by the Secretary of Defense, and by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, each member of the Ready Reserve who is not a member of the Selected Reserve shall notify the Secretary concerned of any change in such member's address, marital status, number of dependents, or civilian employment and of any change in such member's physical condition which would prevent him from meeting the physical or mental standards prescribed for his armed force.

(Added Pub. L. 95–485, title IV, § 405(d)(1), Oct. 20, 1978, 92 Stat. 1616.)

CHAPTER 39—ACTIVE SERVICE

Sec.
[686. Repealed.]

AMENDMENTS

1979—Pub. L. 96–107, title III, § 303(a)(2), Nov. 9, 1979, 93 Stat. 806, struck out item 686 "Reports to Congress".

[§ 686. Repealed. Pub. L. 96–107, title III, § 303(a)(1), Nov. 9, 1979, 93 Stat. 806]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 32; Apr. 21, 1976, Pub. L. 94–273, § 11(2), 90 Stat. 378, provided for an annual officer grade distribution report.

CHAPTER 47—UNIFORM CODE OF MILITARY JUSTICE

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 951, 955, 1037, 5148 of this title; title 5 sections 8312, 8313, 8331; title 28 section 535; title 42 section 217; title 49 sections 1471, 1655; title 50 App. section 473.

SUBCHAPTER I—GENERAL PROVISIONS

§ 802. Art. 2. Persons subject to this chapter

(a) The following persons are subject to this chapter:

[*See main edition for text of* (1) *to* (12)]

(b) The voluntary enlistment of any person who has the capacity to understand the significance of enlisting in the armed forces shall be valid for purposes of jurisdiction under subsection (a) of this section and a change of status from civilian to member of the armed forces shall be effective upon the taking of the oath of enlistment.

(c) Notwithstanding any other provision of law, a person serving with an armed force who—

(1) submitted voluntarily to military authority;

(2) met the mental competency and minimum age qualifications of sections 504 and 505 of this title at the time of voluntary submission to military authority;

(3) received military pay or allowances; and

(4) performed military duties;

is subject to this chapter until such person's active service has been terminated in accordance with law or regulations promulgated by the Secretary concerned.

(As amended Nov. 9, 1979, Pub. L. 96-107, title VIII, § 801(a), 93 Stat. 810.)

AMENDMENTS

1979—Subsec. (a). Pub. L. 96-107, § 801(a)(1), designated existing provisions as subsec. (a).

Subsecs. (b), (c). Pub. L. 96-107, § 801(a)(2), added subsecs. (b) and (c).

TRANSFER OF FUNCTIONS

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

EX. ORD. NO. 10631. CODE OF CONDUCT FOR MEMBERS OF THE ARMED FORCES

Ex. Ord. No. 10631, Aug. 17, 1955, 20 F.R. 6057, as amended by Ex. Ord. No. 11382, Nov. 28, 1967, 32 F.R. 16247; Ex. Ord. No. 12017, Nov. 3, 1977, 42 F.R. 57941, provided:

[*See main edition for text of Order*]

CODE OF CONDUCT FOR MEMBERS OF THE UNITED STATES ARMED FORCES

[*See main edition for text of pars. I to IV*]

V

When questioned, should I become a prisoner of war, I am required to give name, rank, service number and date of birth. I will evade answering further questions to the utmost of my ability. I will make no oral or written statements disloyal to my country and its allies or harmful to their cause.

[*See main edition for text of par. VI*]

SUBCHAPTER II—APPREHENSION AND RESTRAINT

§ 807. Art. 7. Apprehension

REWARD FOR APPREHENSION OF DESERTERS, PRISONERS, AND MEMBERS ABSENT WITHOUT LEAVE

Pub. L. 96-154, title VII, § 709, Dec. 21, 1979, 93 Stat. 1153, provided in part that a reward of not to exceed $75 in any one case shall be paid for the apprehension and delivery of deserters, prisoners, and members of the Army, Navy, Marine Corps, and Air Force absent without leave.

Similar provisions were contained in the following prior acts:

Oct. 13, 1978, Pub. L. 95-457, title VIII, § 809, 92 Stat. 1245.

Sept. 21, 1977, Pub. L. 95-111, title VIII, § 808, 91 Stat. 900.

Sept. 22, 1976, Pub. L. 94-419, title VII, § 708, 90 Stat. 1292.

SUBCHAPTER VII—TRIAL PROCEDURE

§ 836. Art. 36. President may prescribe rules

(a) Pretrial, trial, and post-trial procedures, including modes of proof, for cases arising under this chapter triable in courts-martial, military commissions and other military tribunals, and procedures for courts of inquiry, may be prescribed by the President by regulations which shall, so far as he considers practicable, apply the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the United States district courts, but which may not be contrary to or inconsistent with this chapter.

[*See main edition for text of (b)*]

(As amended Nov. 9, 1979, Pub. L. 96-107, title VIII, § 801(b), 93 Stat. 811.)

AMENDMENTS

1979—Subsec. (a). Pub. L. 96-107 substituted provisions authorizing pretrial, trial, and post-trial procedures for cases under this chapter triable in courts-martial, military commissions and other military tribunals, for provisions authorizing procedure in cases before courts-martial, military commissions, and other military tribunals.

SUBCHAPTER VIII—SENTENCES

§ 858. Art. 58. Execution of confinement

DONATION UPON RELEASE FROM CONFINEMENT OR DISCHARGE FOR FRAUDULENT ENLISTMENT

Pub. L. 96-154, title VII, § 709, Dec. 21, 1979, 93 Stat. 1153, provided in part that donations of not to exceed $25 shall be paid to each prisoner upon each release from confinement in military or contract prison and to each person discharged for fraudulent enlistment.

Similar provisions were contained in the following prior acts:

Oct. 13, 1978, Pub. L. 95-457, title VIII, § 809, 92 Stat. 1244.

Sept. 21, 1977, Pub. L. 95-111, title VIII, § 808, 91 Stat. 900.

Sept. 22, 1976, Pub. L. 94-419, title VII, § 708, 90 Stat. 1292.

SUBCHAPTER IX—REVIEW OF COURTS-MARTIAL

§ 867. Art. 67. Review by the Court of Military Appeals

EX. ORD. NO. 12063. UNITED STATES COURT OF MILITARY APPEALS NOMINATING COMMISSION

Ex. Ord. No. 12063, June 5, 1978, 43 F.R. 24569, provided:

By the authority vested in me as President by the Constitution and statutes of the United States of America, and in order to create in accordance with the Federal Advisory Committee Act (5 U.S.C. App.) an advisory commission on the membership of the United States Court of Military Appeals, it is hereby ordered as follows:

1-1. ESTABLISHMENT OF THE COMMISSION

1-101. There is established the United States Court of Military Appeals Nominating Commission. The Commission shall be comprised of six members appointed by the President.

1-102. Not more than three members shall be officials of the Federal government. The Federal members shall include the General Counsel of the Department of Defense, who shall chair the Commission. The private members shall be selected from among those in the legal profession.

1-2. FUNCTIONS OF THE COMMISSION

1-201. When notified by the President that he desires its assistance in filling a vacancy on the United States Court of Military Appeals, the Commission shall conduct inquiries to identify persons who may be qualified to serve in the position and shall conduct further inquiries to determine those persons' qualifications.

1-202. In conducting its inquiries the Commission shall follow any procedures or criteria established by

the President in his letter of notification or by the Secretary of Defense acting on behalf of the President.

1-203. The Commission shall submit a report to the President and to the Secretary of Defense within 60 days from the date it is notified by the President that he desires its assistance. The report shall list the names of no more than five persons whom the Commission considers well qualified to serve in the position.

1-204. The Commission shall conduct such additional inquiries and submit such additional reports as may be requested by the President.

1-205. The Commission shall perform no function except when requested by the President to assist him in filling a vacancy.

1-3. Administrative Provisions

1-301. The Commission is authorized to request from any Executive agency such information or assistance as the Commission deems necessary to carry out its functions under this Order. Each agency shall, to the extent permitted by law, furnish such information or assistance to the Commission.

1-302. The Commission is authorized to request from any State agency such information and assistance as the Commission deems necessary. It is authorized to obtain such information and assistance to the extent permitted by State law.

1-303. Members of the Commission shall serve without compensation. While engaged in the work of the Commission, members may receive travel expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 5702 and 5703).

1-304. The Secretary of Defense shall furnish to the Commission necessary administrative support.

1-305. All necessary expenses incurred in connection with the work of the Commission, to the extent permitted by law, shall be paid from funds available to the Secretary of Defense.

1-4. General Provisions

1-401. No member of the Commission shall, while serving on the Commission or for a period of one year thereafter, be eligible to be nominated to fill a position as a judge on the Court of Military Appeals.

1-402. Notwithstanding the provisions of any other Executive order, the functions of the President under the Federal Advisory Committee Act (5 U.S.C. App.), except that of reporting annually to the Congress, which are applicable to the Commission, shall be performed by the Secretary of Defense in accordance with the guidelines and procedures established by the Administrator of General Services.

1-403. The Commission shall terminate on December 31, 1978, unless sooner extended.

Jimmy Carter.

Extension of Term of United States Court of Military Appeals Nominating Commission

Term of the United States Court of Military Appeals Nominating Commission extended until Dec. 31, 1980, see Ex. Ord. No. 12110, Dec. 28, 1978, 44 F.R. 1069, set out as a note under section 14 of Appendix to Title 5, Government Organization and Employees.

SUBCHAPTER X—PUNITIVE ARTICLES

§ 888. Contempt toward officials

Transfer of Functions

The Coast Guard was transferred to the Department of Transportation, and all functions, powers, and duties relating to the Coast Guard of the Secretary of the Treasury and of other officers and offices of the Department of the Treasury were transferred to the Secretary of Transportation by Pub. L. 89-670, § 6(b)(1), Oct. 15, 1966, 80 Stat. 938. Section 6(b)(2) of Pub. L. 89-670, however, provided that notwithstanding such transfer of functions, the Coast Guard shall operate as part of the Navy in time of war or when the President directs as provided in section 3 of Title 14, Coast Guard. See section 1655(b) of Title 49, Transportation.

§ 923a. Art. 123a. Making, drawing, or uttering check, draft, or order without sufficient funds

Any person subject to this chapter who—

(1) for the procurement of any article or thing of value, with intent to defraud; or

(2) for the payment of any past due obligation, or for any other purpose, with intent to deceive;

makes, draws, utters, or delivers any check, draft, or order for the payment of money upon any bank or other depository, knowing at the time that the maker or drawer has not or will not have sufficient funds in, or credit with, the bank or other depository for the payment of that check, draft, or order in full upon its presentment, shall be punished as a court-martial may direct. The making, drawing, uttering, or delivering by a maker or drawer of a check, draft, or order, payment of which is refused by the drawee because of insufficient funds of the maker or drawer in the drawee's possession or control, is prima facie evidence of his intent to defraud or deceive and of his knowledge of insufficient funds in, or credit with, that bank or other depository, unless the maker or drawer pays the holder the amount due within five days after receiving notice, orally or in writing, that the check, draft, or order was not paid on presentment. In this section, the word "credit" means an arrangement or understanding, express or implied, with the bank or other depository for the payment of that check, draft, or order.

(Added Pub. L. 87-385, § 1(1), Oct. 4, 1961, 75 Stat. 814.)

Codification

Section is set out in this supplement to correct typographical error appearing in the main edition.

CHAPTER 48—MILITARY CORRECTIONAL FACILITIES

Sec.
955. Prisoners transferred to or from foreign countries.[1]

§ 955. Prisoners transferred to or from foreign countries

(a) When a treaty is in effect between the United States and a foreign country providing for the transfer of convicted offenders, the Secretary concerned may, with the concurrence of the Attorney General, transfer to said foreign country any offender against chapter 47 of this title. Said transfer shall be effected subject to the terms of said treaty and chapter 306 of title 18, United States Code.

(b) Whenever the United States is party to an agreement on the status of forces under which the United States may request that it take custody of a prisoner belonging to its armed forces

[1] Item 955 was inserted editorially as section was added without adding section heading to analysis.

who is confined by order of a foreign court, the Secretary concerned may provide for the carrying out of the terms of such confinement in a military correctional facility of his department or in any penal or correctional institution under the control of the United States or which the United States may be allowed to use. Except as otherwise specified in such agreement, such person shall be treated as if he were an offender against chapter 47 of this title.

(Added Pub. L. 95–144, § 4, Oct. 28, 1977, 91 Stat. 1221.)

CHAPTER 49—MISCELLANEOUS PROHIBITIONS AND PENALTIES

Sec.
975. Prohibition on the sale of certain defense articles from the stocks of the Department of Defense.
976. Membership in military unions, organizing of military unions, and recognition of military unions prohibited.

AMENDMENTS

1979—Pub. L. 96–107, title VIII, § 821(b), Nov. 9, 1979, 93 Stat. 820, redesignated item 975 relating to membership in military unions as 976.

1978—Pub. L. 95–610, § 2(b), Nov. 8, 1978, 92 Stat. 3088, added item 975 relating to military unions.

Pub. L. 95–485, title VIII, § 815(b), Oct. 20, 1978, 92 Stat. 1626, added item 975 relating to the sale of certain defense articles.

§ 975. Prohibition on the sale of certain defense articles from the stocks of the Department of Defense

(a)(1) Except as provided in subsections (b) and (c), the sale outside the Department of Defense of any defense article designated or otherwise classified as Prepositioned Material Configured to Unit Sets, as decrement stock, or as Prepositioned War Reserve Stocks for United States Forces is prohibited.

(2) In this section, "decrement stock" means such stock as is needed to bring the armed forces from a peacetime level of readiness to a combat level of readiness.

(b) The President may authorize the sale outside the Department of Defense of a defense article described in subsection (a) if—

(1) he determines that there is an international crisis affecting the national security of the United States and the sale of such article is in the best interests of the United States; and

(2) he reports to the Congress not later than 60 days after the transfer of such article a plan for the prompt replenishment of the stocks of such article and the planned budget request to begin implementation of that plan.

(c)(1) Nothing in this section shall preclude the sale of stocks which have been designated for replacement, substitution, or elimination or which have been designated for sale to provide funds to procure higher priority stocks.

(2) Nothing in this section shall preclude the transfer or sale of equipment to other members of the North Atlantic Treaty Organization.

(Added Pub. L. 95–485, title VIII, § 815(a), Oct. 20, 1978, 92 Stat. 1625.)

CODIFICATION

A prior section 975 was renumbered 976.

§ 976. Membership in military unions, organizing of military unions, and recognition of military unions prohibited

(a) In this section:

(1) "Member of the armed forces" means (A) a member of the armed forces who is serving on active duty, or (B) a member of a Reserve component while performing inactive-duty training.

(2) "Military labor organization" means any organization that engages in or attempts to engage in—

(A) negotiating or bargaining with any civilian officer or employee, or with any member of the armed forces, on behalf of members of the armed forces, concerning the terms or conditions of military service of such members in the armed forces;

(B) representing individual members of the armed forces before any civilian officer or employee, or any member of the armed forces, in connection with any grievance or complaint of any such member arising out of the terms or conditions of military service of such member in the armed forces; or

(C) striking, picketing, marching, demonstrating, or any other similar form of concerted action which is directed against the Government of the United States and which is intended to induce any civilian officer or employee, or any member of the armed forces, to—

(i) negotiate or bargain with any person concerning the terms or conditions of military service of any member of the armed forces,

(ii) recognize any organization as a representative of individual members of the armed forces in connection with complaints and grievances of such members arising out of the terms or conditions of military service of such members in the armed forces, or

(iii) make any change with respect to the terms or conditions of military service of individual members of the armed forces.

(3) "Civilian officer or employee" means an employee, as such term is defined in section 2105 of title 5.

(b) It shall be unlawful for a member of the armed forces, knowing of the activities or objectives of a particular military labor organization—

(1) to join or maintain membership in such organization; or

(2) to attempt to enroll any other member of the armed forces as a member of such organization.

(c) It shall be unlawful for any person—

(1) to enroll in a military labor organization any member of the armed forces or to solicit or accept dues or fees for such an organization from any member of the armed forces; or

(2) to negotiate or bargain, or attempt through any coercive act to negotiate or bar-

gain, with any civilian officer or employee, or any member of the armed forces, on behalf of members of the armed forces, concerning the terms or conditions of service of such members;

(3) to organize or attempt to organize, or participate in, any strike, picketing, march, demonstration, or other similar form of concerted action involving members of the armed forces that is directed against the Government of the United States and that is intended to induce any civilian officer or employee, or any member of the armed forces, to—

(A) negotiate or bargain with any person concerning the terms or conditions of service of any member of the armed forces,

(B) recognize any military labor organization as a representative of individual members of the armed forces in connection with any complaint or grievance of any such member arising out of the terms or conditions of service of such member in the armed forces, or

(C) make any change with respect to the terms or conditions of service in the armed forces of individual members of the armed forces; or

(4) to use any military installation, facility, reservation, vessel, or other property of the United States for any meeting, march, picketing, demonstration, or other similar activity for the purpose of engaging in any activity prohibited by this subsection or by subsection (b) or (d).

(d) It shall be unlawful for any military labor organization to represent, or attempt to represent, any member of the armed forces before any civilian officer or employee, or any member of the armed forces, in connection with any grievance or complaint of any such member arising out of the terms or conditions of service of such member in the armed forces.

(e) No member of the armed forces, and no civilian officer or employee, may—

(1) negotiate or bargain on behalf of the United States concerning the terms or conditions of military service of members of the armed forces with any person who represents or purports to represent members of the armed forces, or

(2) permit or authorize the use of any military installation, facility, reservation, vessel, or other property of the United States for any meeting, march, picketing, demonstration, or other similar activity which is for the purpose of engaging in any activity prohibited by subsection (b), (c), or (d).

Nothing in this subsection shall prevent commanders or supervisors from giving consideration to the views of any member of the armed forces presented individually or as a result of participation on command-sponsored or authorized advisory councils, committees, or organizations.

(f) Whoever violates subsection (b), (c), or (d) shall, in the case of an individual, be fined not more than $10,000 or imprisoned not more than five years, or both, and in the case of an organization or association, be fined not less than $25,000 and not more than $250,000.

(g) Nothing in this section shall limit the right of any member of the armed forces—

(1) to join or maintain membership in any organization or association not constituting a "military labor organization" as defined in subsection (a)(2) of this section;

(2) to present complaints or grievances concerning the terms or conditions of the service of such member in the armed forces in accordance with established military procedures;

(3) to seek or receive information or counseling from any source;

(4) to be represented by counsel in any legal or quasi-legal proceeding, in accordance with applicable laws and regulations;

(5) to petition the Congress for redress of grievances; or

(6) to take such other administrative action to seek such administrative or judicial relief, as is authorized by applicable laws and regulations.

(Added Pub. L. 95-610, § 2(a), Nov. 8, 1978, 92 Stat. 3085, § 975, renumbered § 976, Pub. L. 96-107, title VIII, § 821(a), Nov. 9, 1979, 93 Stat. 820.)

CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSE

Section 1 of Pub. L. 95-610 provided that:

"(a) The Congress makes the following findings:

"(1) Members of the armed forces of the United States must be prepared to fight and, if necessary, to die to protect the welfare, security, and liberty of the United States and of their fellow citizens.

"(2) Discipline and prompt obedience to lawful orders of superior officers are essential and time-honored elements of the American military tradition and have been reinforced from the earliest articles of war by laws and regulations prohibiting conduct detrimental to the military chain of command and lawful military authority.

"(3) The processes of conventional collective bargaining and labor-management negotiation cannot and should not be applied to the relationships between members of the armed forces and their military and civilian superiors.

"(4) Strikes, slowdowns, picketing, and other traditional forms of job action have no place in the armed forces.

"(5) Unionization of the armed forces would be incompatible with the military chain of command, would undermine the role, authority, and position of the commander, and would impair the morale and readiness of the armed forces.

"(6) The circumstances which could constitute a threat to the ability of the armed forces to perform their mission are not comparable to the circumstances which could constitute a threat to the ability of Federal civilian agencies to perform their functions and should be viewed in light of the need for effective performance of duty by each member of the armed forces.

"(b) The purpose of this Act [enacting this section] is to promote the readiness of the armed forces to defend the United States."

CHAPTER 53—MISCELLANEOUS RIGHTS AND BENEFITS

Sec.
[1032. Repealed.]

AMENDMENTS

1977—Pub. L. 95-105, title V, § 509(d)(2), Aug. 17, 1977, 91 Stat. 860, struck out item 1032 "Dual capacity:

Reserve accepting employment with foreign government or concern".

[§ 1032. Repealed. Pub. L. 95-105, title V, § 509(d)(1), Aug. 17, 1977, 91 Stat. 860]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 80, provided that a Reserve may accept civil employment with a foreign government or concern.

§ 1040. Transportation of dependent patients

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

CHAPTER 55—MEDICAL AND DENTAL CARE

§ 1072. Definitions

TRANSFER OF FUNCTIONS

Certain functions, relating generally to education, of the Department of Health, Education, and Welfare and the Secretary and other offices and divisions thereof were transferred to the Secretary of Education by section 3441 of Title 20, Education, and the Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20.

§§ 1073, 1074

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

§ 1076. Medical and dental care for dependents: general rule

[See main edition for text of (a)]

(b) Under regulations to be prescribed jointly by the Secretary of Defense and the Secretary of Health, Education, and Welfare, a dependent of a member or former member—

(1) who is, or (if deceased) was at the time of his death, entitled to retired or retainer pay or equivalent pay; or

(2) who died before attaining age 60 and at the time of his death (A) would have been eligible for retired pay under chapter 67 of this title but for the fact that he was under 60 years of age, and (B) had elected to participate in the Survivor Benefit Plan established under subchapter II of chapter 73 of this title;

may, upon request, be given the medical and dental care prescribed by section 1077 of this title in facilities of the uniformed services, subject to the availability of space and facilities and the capabilities of the medical and dental staff, except that a dependent of a member or former member described in clause (2) may not be given such medical or dental care until the date on which such member or former member would have attained age 60.

[See main edition for text of (c) and (d)]

(As amended Pub. L. 95-397, title III, § 301, Sept. 30, 1978, 92 Stat. 849.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-397 substituted "Under regulations to be prescribed jointly by the Secretary of Defense and the Secretary of Health, Education, and Welfare, a dependent of a member or former member-" for "Under joint regulations to be prescribed by the Secretary of Defense and the Secretary of Health, Education, and Welfare, a dependent of a member or former member who is, or was at the time of his death, entitled to retired or retainer pay, or equivalent pay, may, upon request, be given the medical and dental care prescribed by section 1077 of this title in facilities of the uniformed services, subject to the availability of space and facilities and the capabilities of the medical and dental staff", added pars. (1), (2), and provisions following par. (2) relating to medical and dental care on request in facilities of the uniformed services subject to the availability of space, facilities and capabilities of staff, and excepting from such care provision a dependent of a member or former member until such member or former member would have attained age 60.

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 302 of Pub. L. 95-397 provided that: "The amendment made by section 301 [amending subsec. (b) of this section] shall become effective on October 1, 1978, or on the date of the enactment of this Act [Sept. 30, 1978], whichever is later."

§ 1078. Medical and dental care for dependents: charges

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

§ 1079. Contracts for medical care for spouses and children: plans

[See main edition for text of (a) to (g)]

(h) Payment of a charge for physician services for which a claim is submitted under a plan contracted for under subsection (a) may be denied because the charge is in excess of a predetermined charge level based upon customary charges made for similar services in the same locality only to the extent that such charge is in excess of the charge level that, on the basis of statistical data and methodology acceptable to the Secretary of Defense, in consultation with the Secretary of Health, Education, and Welfare, is equivalent to the 90th percentile of the customary charges made for similar services in the same locality during the last preceding calendar year elapsing before the start of the twelve-month period (beginning July 1 of each year) in which the claim for the payment is submitted.

(As amended Pub. L. 95-485, title VIII, § 806(a)(1), Oct. 20, 1978, 92 Stat. 1622.)

AMENDMENTS

1978—Subsec. (h). Pub. L. 95-485 added subsec. (h).

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 806(b) of Pub. L. 95-485 provided that: "The amendments made by subsection (a) [amending this

section and section 1086 of this title] shall apply with respect to claims submitted for payment for services provided on or after the first day of the first calendar year beginning after the date of enactment of this Act [Oct. 20, 1978]."

§§ 1080, 1081, 1083 to 1085

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

§ 1086. Contracts for health benefits for certain members, former members, and their dependents

[See main edition for text of (a) to (e)]

(f) The provisions of section 1079(h) of this title shall apply to payments for physician services under a plan contracted for under subsection (a).

(g) Notwithstanding subsection (d) or any other provision of this chapter, no person eligible for health benefits under this section may be denied benefits under this section with respect to care or treatment for any service-connected disability which is compensable under chapter 11 of title 38 solely on the basis that such person is entitled to care or treatment for such disability in Veterans' Administration facilities.

(As amended Pub. L. 95-485, title VIII, § 806(a)(2), Oct. 20, 1978, 92 Stat. 1622; Pub. L. 96-173, § 1, Dec. 29, 1979, 93 Stat. 1287.)

AMENDMENTS

1979—Subsec. (g). Pub. L. 96-173 added subsec. (g).
1978—Subsec. (f). Pub. L. 95-485 added subsec. (f).

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

EFFECTIVE DATE OF 1979 AMENDMENT

Section 2 of Pub. L. 96-173 provided that: "The amendment made by the first section of this Act [enacting subsec. (g) of this section] shall take effect on October 1, 1979."

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-485 applicable with respect to claims submitted for payment for services provided on or after the first day of the first calendar year beginning after Oct. 20, 1978, see section 806(b) of Pub. L. 95-485 set out as an Effective Date of 1978 Amendment note under section 1079 of this title.

CHAPTER 57—DECORATIONS AND AWARDS

EX. ORD. NO. 12019. DEFENSE MERITORIOUS SERVICE MEDAL

Ex. Ord. No. 12019, Nov. 3, 1977, 42 F.R. 57945, provided:

By virtue of the authority vested in me as President of the United States of America, and as Commander in Chief of the Armed Forces, it is hereby ordered as follows:

SECTION 1. There is hereby established a Defense Meritorious Service Medal, with accompanying ribbons and appurtenances, for award by the Secretary of Defense to any member of the Armed Forces of the United States who has rendered outstanding noncombat meritorious achievement or service while assigned to the Office of the Secretary of Defense, the Organization of the Joint Chiefs of Staff, a specified or unified command, a Defense agency, or other such joint activity as may be designated by the Secretary of Defense.

SEC. 2. The Defense Meritorious Service Medal, with accompanying ribbons and appurtenances, shall be of appropriate design approved by the Secretary of Defense and shall be awarded under such regulations as the Secretary of Defense may prescribe. These regulations shall place the Defense Meritorious Service Medal in an order of precedence after the Medal of Honor, the Distinguished Service Cross, the Defense Distinguished Service Medal, the Distinguished Service Medal, the Silver Star Medal, the Defense Superior Service Medal, the Legion of Merit Medal, and the Bronze Star Medal, but before the Meritorious Service Medal.

SEC. 3. No more than one Defense Meritorious Service Medal shall be awarded to any one person, but for each succeeding outstanding meritorious achievement or service justifying such an award a suitable device to be worn with that medal may be awarded under such regulations as the Secretary of Defense may prescribe.

SEC. 4. The Defense Meritorious Service Medal or device may be awarded posthumously and, when so awarded, may be presented to such representative of the deceased as may be deemed appropriate by the Secretary of Defense.

JIMMY CARTER.

§ 1124. Cash awards for suggestions, inventions, or scientific achievements

EX. ORD. NO. 11438. PROCEDURES GOVERNING INTERDEPARTMENTAL CASH AWARDS

Ex. Ord. No. 11438, Dec. 3, 1968, 33 F.R. 18085, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

[See main edition for text of first par., Secs. 1 to 3]

SEC. 4. Funds to cover the costs of cash awards to members of the armed forces shall be transferred from the account of any executive department or agency which recommends the award to the appropriate account of the Department of Transportation or the Department of Defense, as the case may be. When several executive departments or agencies benefit from the adoption or use of the suggestion, invention, or scientific achievement, the amount transferred from each such benefiting department or agency to the Department of Transportation or the Department of Defense to cover the proportionate share of the cost of the cash award shall be determined under procedures prescribed by the Office of Personnel Management in accordance with the same guidelines and standards applying to awards to civilian employees.

CHAPTER 61—RETIREMENT OR SEPARATION FOR PHYSICAL DISABILITY

§ 1201. Regulars and members on active duty for more than 30 days: retirement

Upon a determination by the Secretary concerned that a member of a regular component of the armed forces entitled to basic pay, or any other member of the armed forces entitled to basic pay who has been called or ordered to active duty (other than for training under section 270(b) of this title) for a period of more than 30 days, is unfit to perform the duties of his office, grade, rank, or rating because of physical disability incurred while entitled to basic pay, the Secretary may retire the member, with retired pay computed under section 1401 of this title, if the Secretary also determines that—

[*See main edition for text of (1) and (2)*]

(3) either—

(A) the member has at least 20 years of service computed under section 1208 of this title; or

(B) the disability is at least 30 percent under the standard schedule of rating disabilities in use by the Veterans' Administration at the time of the determination; and either—

(i) the member has at least eight years of service computed under section 1208 of this title;

(ii) the disability is the proximate result of performing active duty; or

(iii) the disability was incurred in line of duty in time of war or national emergency.

(As amended Sept. 19, 1978, Pub. L. 95-377, § 3(1), 92 Stat. 719.)

AMENDMENTS

1978—Par. (3)(B)(iv). Pub. L. 95-377 added par. (3)(B)(iv) providing additional condition that disability was incurred in line of duty during September 15, 1978, through September 30, 1979, which was to be effective on determination by the President .

EFFECTIVE AND TERMINATION DATES OF 1978 AMENDMENT

Section 3 of Pub. L. 95-377 provided in part that the amendment by Pub. L. 95-377 is effective only for the period beginning Sept. 15, 1978 and ending Sept. 30, 1979.

SUSPENSION OF CERTAIN PROMOTION AND DISABILITY SEPARATION LIMITATIONS

For provisions relating to the suspension of certain promotion and disability separation limitations, see Ex. Ord. No. 12082, Sept. 19, 1978, 43 F.R. 42727, set out as a note under section 5707 of this title.

§ 1203. Regulars and members on active duty for more than 30 days: separation

Upon a determination by the Secretary concerned that a member of a regular component of the armed forces entitled to basic pay, or any other member of the armed forces entitled to basic pay who has been called or ordered to active duty (other than for training under section 270(b) of this title) for a period of more than 30 days, is unfit to perform the duties of his office, grade, rank, or rating because of physical disability incurred while entitled to basic pay, the member may be separated from his armed force, with severance pay computed under section 1212 of this title, if the Secretary also determines that—

[*See main edition for text of (1) to (3)*]

(4) either—

(A) the disability is less than 30 percent under the standard schedule of rating disabilities in use by the Veterans' Administration at the time of the determination, and the disability was (i) the proximate result of performing active duty, or (ii) incurred in line of duty in time of war or national emergency;

(B) the disability is less than 30 percent under the standard schedule of rating disabilities in use by the Veterans' Administration at the time of the determination, and the member has at least eight years of service computed under section 1208 of this title, or

(C) the disability is at least 30 percent under the standard schedule of rating disabilities in use by the Veterans' Administration at the time of the determination, the disability was neither the proximate result of performing active duty nor incurred in line of duty in time of war or national emergency, and the member has less than eight years of service computed under section 1208 of this title on the date when he would otherwise be retired under section 1201 of this title or placed on the temporary disability retired list under section 1202 of this title.

However, if the member is eligible for transfer to the inactive status list under section 1209 of this title, and so elects, he shall be transferred to that list instead of being separated.

(As amended Sept. 19, 1978, Pub. L. 95-377, § 3(2), (3), 92 Stat. 719, 720.)

AMENDMENTS

1978—Par. (4)(A)(iii). Pub. L. 95-377, § 3(2), added par. (4)(A)(iii) providing additional condition that disability was incurred in line of duty during September 15, 1978, through September 30, 1979, which was to be effective on determination by the President.

Par. (4)(C). Pub. L. 95-377, § 3(3), designated existing conditions of performing active duty and incurred in line of duty in time of war or national emergency as clauses (i) and (ii) and added clause (iii) providing additional condition that disability was incurred in line of duty during September 15, 1978, through September 30, 1979, which was to be effective on determination by the President.

EFFECTIVE AND TERMINATION DATES OF 1978 AMENDMENT

Section 3 of Pub. L. 95-377 provided in part that the amendment by Pub. L. 95-377 is effective only for the period beginning Sept. 15, 1978 and ending Sept. 30, 1979.

SUSPENSION OF CERTAIN PROMOTION AND DISABILITY SEPARATION LIMITATIONS

For provisions relating to the suspension of certain promotion and disability separation limitations, see Ex. Ord. No. 12082, Sept. 19, 1978, 43 F.R. 42727, set out as a note under section 5707 of this title.

§ 1212. Disability severance pay

TRANSFER OF FUNCTIONS

The Coast Guard was transferred to the Department of Transportation, and all functions, powers, and duties relating to the Coast Guard of the Secretary of the Treasury and of other officers and offices of the Department of the Treasury were transferred to the Secretary of Transportation by Pub. L. 89-670, § 6(b)(1), Oct. 15, 1966, 80 Stat. 938, Section 6(b)(2) of Pub. L. 89-670, however, provided that notwithstanding such transfer of functions, the Coast Guard shall operate as part of the Navy in time of war or when the President directs as provided in section 3 of Title 14, Coast Guard. See section 1655(b) of Title 49, Transportation.

CHAPTER 63—RETIREMENT FOR AGE

§ 1263. Age 62: warrant officers

REFERENCES IN TEXT

Section 311 of title 37, referred to in subsec. (a), is a reference to section 511 of the Career Compensation Act of 1949 (63 Stat. 829, as amended), which appeared as section 311 of title 37 prior to the enactment of Title 37, Pay and Allowances of the Uniformed Services, by Pub. L. 87-649. Section 511 of the 1949 Act was neither included in Title 37 nor repealed by Pub. L. 87-649, and is set out as a note under section 564 of this title.

CHAPTER 67—RETIRED PAY FOR NON-REGULAR SERVICE

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 676, 1076, 1406, 1447, 1448, 6034 of this title; title 5 section 8332; title 38 sections 765, 768.

§ 1331. Age and service requirements

[*See main edition for text of (a) to (c)*]

(d) The Secretary concerned shall provide for notifying each person who has completed the years of service required for eligibility for retired pay under this chapter. The notice must be sent, in writing, to the person concerned within one year after he has completed that service. Such notice shall include notification of the elections available to such person under the Survivor Benefit Plan established under subchapter II of chapter 73 of this title and the effects of such elections.

[*See main edition for text of (e)*]

(As amended Sept. 30, 1978, Pub. L. 95-397, title II, § 206, 92 Stat. 847.)

AMENDMENTS

1978—Subsec. (d). Pub. L. 95-397 added provisions requiring that notice include notification of elections available under the Survivor Benefit Plan and the effects thereof.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-397 applicable to notifications after Sept. 30, 1978, see section 210(b) of Pub. L. 95-397, set out as an Effective Date of 1978 Amendment note under section 1447 of this title.

TRANSFER OF FUNCTIONS

The Coast Guard was transferred to the Department of Transportation, and all functions, powers, and duties relating to the Coast Guard of the Secretary of the Treasury and of other officers and offices of the Department of the Treasury were transferred to the Secretary of Transportation by Pub. L. 89-670, § 6(b)(1), Oct. 15, 1966, 80 Stat. 938. Section 6(b)(2) of Pub. L. 89-670, however, provided that notwithstanding such transfer of functions, the Coast Guard shall operate as part of the Navy in time of war or when the President directs as provided in section 3 of Title 14, Coast Guard. See section 1655(b) of Title 49, Transportation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1332, 1401, 1405, 1406, 1447, 1448, 1482, 4342, 6954, 9342 of this title.

CHAPTER 71—COMPUTATION OF RETIRED PAY

§ 1401a. Adjustment of retired pay and retainer pay to reflect changes in Consumer Price Index

COMPUTATION OF RETIRED PAY OF SERGEANT MAJORS OF MARINE CORPS WHO COMPLETED SERVICE PRIOR TO DECEMBER 16, 1967

Pub. L. 95-581, Nov. 2, 1978, 92 Stat. 2478 provided: "That (a) the retired pay of any individual who served as sergeant major of the Marine Corps and who completed such service before December 16, 1967, shall be computed based upon a rate of basic pay of the sum of (1) the highest rate of basic pay to which such individual was entitled while so serving, and (2) $150.

"(b) For the purpose of computing any adjustment under section 1401a of title 10, United States Code, in the retired pay of any individual whose retired pay is affected by subsection (a), the rate of basic pay provided under such subsection for the purpose of computing the retired pay of such individual shall be considered to have been the rate of basic pay applicable to such individual at the time of his retirement, and any adjustment under such section 1401a in the retired pay of such individual before September 30, 1978, shall be readjusted to reflect such rate of basic pay.

"SEC. 2. (a) Any change in the retired pay of any individual by reason of the enactment of this Act shall be effective for months beginning after September 30, 1978.

"(b) The enactment of this Act shall not reduce the retired pay of any individual."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1402, 1434, 1447, 1451 of this title; title 5 section 5532.

CHAPTER 73—ANNUITIES BASED ON RETIRED OR RETAINER PAY; SURVIVOR BENEFIT PLAN

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 5 sections 5531, 8311, 8317; title 26 sections 72, 101, 122, 2039, 2517, 6334; title 33 section 857a; title 42 section 213a.

SUBCHAPTER I—RETIRED SERVICEMAN'S FAMILY PROTECTION PLAN

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 38 section 415.

§ 1431. Election of annuity: members of armed forces

SHORT TITLE OF 1978 AMENDMENTS

Section 1 of Pub. L. 95-397, Sept. 30, 1978, 92 Stat. 843, provided: "That this Act [amending sections 1076, 1331, 1434, and 1447 to 1452 of this title and enacting provisions set out as notes under sections 1076, 1434, 1447 and 1448 of this title] may be cited as the 'Uniformed Services Survivors' Benefits Amendments of 1978'."

§ 1434. Kinds of annuities that may be elected

(a) The annuity that a person is entitled to elect under section 1431 or 1432 of this title shall, in conformance with actuarial tables selected by the Board of Actuaries under section 1436(a) of this title, be the amount specified by the elector at the time of the election, but not more than 50 per centum nor less than 12½ per centum of his retired or retainer pay, in no case less than $25. He may make the annuity payable—

(1) to, or on behalf of, the surviving spouse, ending when the spouse dies or, if the spouse

remarries before age 60, when the spouse remarries;

(2) in equal shares to, or on behalf of, the surviving children eligible for the annuity at the time each payment is due, ending when there is no surviving eligible child; or

(3) to, or on behalf of, the surviving spouse, and after the death of that spouse or the remarriage of that spouse before age 60, in equal shares to, or on behalf of, the surviving eligible children, ending when there is no surviving eligible child.

[*See main edition for text of* (b) *to* (d)]

(e) Whenever there is an increase in retired and retainer pay under section 1401a of this title, each annuity that is payable under this subchapter on the day before the effective date of that increase to a spouse or child of a member who died on or before March 20, 1974, shall be increased by the same percentage as the percentage of that increase, effective on the effective date of that increase.

(As amended Sept. 30, 1978, Pub. L. 95-397, title I, § 101(a), 92 Stat. 843.)

AMENDMENTS

1978—Subsec. (a)(1). Pub. L. 95-397, § 101(a)(1), substituted "or, if the spouse remarries before age 60, when the spouse remarries" for "or remarries".

Subsec. (a)(3). Pub. L. 95-397, § 101(a)(2), substituted "of that spouse or the remarriage of that spouse before age 60" for "or remarriage of that spouse".

Subsec. (e). Pub. L. 95-397, § 101(a)(3), added subsec. (e).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 101(b) of Pub. L. 95-397 provided that: "No benefits shall accrue to any person by virtue of the amendments made by subsection (a) [amending this section] for any period prior to the first day of the first calendar month following the month in which this Act is enacted [Sept. 1978] or October 1, 1978, whichever is later."

INCREASE IN AMOUNT OF ANNUITY PAYABLE UNDER RETIRED SERVICEMAN'S FAMILY PROTECTION PLAN

Section 102 of Pub. L. 95-397 provided that: "Each annuity that is payable under subchapter I of chapter 73 of title 10, United States Code, on the day before the date of the enactment of this Act [Sept. 30, 1978] to a spouse or child of a member of the uniformed services who died on or before March 20, 1974, shall be increased effective as of the first day of the first calendar month following the month in which this Act [See Short Title note set out under section 1431 of this title] is enacted [Sept. 1978], or as of October 1, 1978, whichever is later, by the percentage increase in retired and retainer pay under section 1401a of that title [this title] since September 21, 1972."

§ 1440. Annuities not subject to legal process

CROSS REFERENCES

Enforcement of legal obligations to provide child support and make alimony payments, see section 659 of Title 42, The Public Health and Welfare.

SUBCHAPTER II—SURVIVOR BENEFIT PLAN

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1076, 1331 of this title.

§ 1447. Definitions

In this subchapter:

(1) "Plan" means the Survivor Benefit Plan established by this subchapter.

(2) "Base amount" means—

(A) in the case of a person who dies after becoming entitled to retired or retainer pay, the amount of monthly retired or retainer pay to which the person—

(i) was entitled when he became eligible for that pay; or

(ii) later became entitled by being advanced on the retired list, performing active duty, or being transferred from the temporary disability retired list to the permanent disability retired list;

(B) in the case of a person who would have become eligible for retired pay under chapter 67 of this title but for the fact that he died before becoming 60 years of age, the amount of monthly retired pay for which the person would have been eligible—

(i) if he had been 60 years of age on the date of his death, for purposes of an annuity to become effective on the day after his death in accordance with a designation made under section 1448(e) of this title; or

(ii) upon becoming 60 years of age (if he had lived to that age), for purposes of an annuity to become effective on the 60th anniversary of his birth in accordance with a designation made under section 1448(e) of this title; or

(C) any amount which is less than the amount otherwise applicable under clause (A) or (B) with respect to an annuity provided under the Plan and which is designated by the person providing the annuity on or before (i) the first day for which he becomes eligible for retired or retainer pay, in the case of a person providing an annuity by virtue of eligibility under section 1448(a)(1)(A) of this title, or (ii) the end of the 90-day period beginning on the date on which he receives the notification required by section 1331(d) of this title that he has completed the years of service required for eligibility for retired pay under chapter 67 of this title, in the case of a person providing an annuity by virtue of eligibility under section 1448(a)(1)(B) of this title, but not less than $300;

as increased from time to time under section 1401a of this title.

[*See main edition for text of* (3) *to* (5)]

(As amended Pub. L. 95-397, title II, § 201, Sept. 30, 1978, 92 Stat. 843.)

AMENDMENTS

1978—Par. (2). Pub. L. 95-397 added "in the case of a person who dies after becoming entitled to retired or retainer pay" preceding "the amount" and substituted "pay to which the person" for "pay to which a person" in subpar. (A), substituted "in the case of a person who would have become eligible for retired pay under chapter 67 of this title but for the fact that he died before becoming 60 years of age, the amount of monthly retired pay for which the person would have been eligible—" for "any amount less than that described by clause (A) designated by that person on or

before the first day for which he became eligible for retired or retainer pay, but not less than $300" in subpar. (B), and added subpars. (B)(i), (ii) and (C).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 210 of Pub. L. 95-397 provided that:

"(a) Except as provided in subsection (b), the provisions of this title [amending this section and section 1331 and 1448 to 1452 of this title and enacting provisions set out as notes under this section and section 1448 of this title] and the amendments made by this title shall take effect on October 1, 1978, or on the date of the enactment of this Act [Sept. 30, 1978], whichever is later, and shall apply to annuities payable by virtue of such amendments for months beginning on or after such date.

"(b) The amendment made by section 206 [amending section 1331 of this title] shall apply to notifications under section 1331(d) of title 10, United States Code, after the date of the enactment of this Act [Sept. 30, 1978]."

END OF 90-DAY PERIOD WITH RESPECT TO CERTAIN INDIVIDUALS

Section 208 of Pub. L. 95-397, as amended by Pub. L. 96-107, title VIII, § 816, Nov. 9, 1979, 93 Stat. 818, provided that:

"With respect to any individual who—

"(1) would be eligible for retired pay under chapter 67 of title 10, United States Code, on the effective date of this title [see Effective Date of 1978 Amendment note set out above] but for the fact that such individual is under 60 years of age; or

"(2) receives, before January 1, 1980 a notification that such individual has completed the years of service required for eligibility for such retired pay;

the 90-day period referred to in section 1447(2)(C) of title 10, United States Code (as amended by section 201 of this Act), and in sections 1448(a)(2) and 1448(a)(4)(B) of title 10, United States Code (as amended by section 202(a) of this Act) shall be considered to end March 31, 1980."

§ 1448. Application of Plan

(a)(1) The program established by this subchapter shall be known as the Survivor Benefit Plan. The following persons are eligible to participate in the Plan:

(A) Persons entitled to retired or retainer pay.

(B) Persons who would be eligible for retired pay under chapter 67 of this title but for the fact that they are under 60 years of age.

(2) The Plan applies—

(A) to a person who is eligible to participate in the Plan under paragraph (1)(A) and who is married or has a dependent child when he becomes entitled to retired or retainer pay, unless he elects not to participate in the Plan before the first day for which he is eligible for that pay; and

(B) to a person who (i) is eligible to participate in the Plan under paragraph (1)(B), (ii) is married or has a dependent child when he is notified under section 1331(d) of this title that he has completed the years of service required for eligibility for retired pay under chapter 67 of this title, and (iii) elects to participate in the Plan (and makes a designation under subsection (e)) before the end of the 90-day period beginning on the date he receives such notification.

A person described in subclauses (i) and (ii) of clause (B) who does not elect to participate in the Plan before the end of the 90-day period referred to in such clause shall remain eligible, upon reaching 60 years of age and otherwise becoming entitled to retired pay, to participate in the Plan in accordance with eligibility under paragraph (1)(A).

(3)(A) If a person who is eligible under paragraph (1)(A) to participate in the Plan and who is married elects not to participate in the Plan at the maximum level, or elects to provide an annuity for a dependent child but not for his spouse, that person's spouse shall be notified of that election.

(B) If a person who is eligible under paragraph (1)(B) to participate in the Plan and who is married does not elect to participate in the Plan at the maximum level, or elects to provide an annuity for a dependent child but not for his spouse, that person's spouse shall be notified of that action.

(4)(A) An election under paragraph (2)(A) not to participate in the Plan is irrevocable if not revoked before the date on which the person first becomes entitled to retired or retainer pay.

(B) An election under paragraph (2)(B) to participate in the Plan is irrevocable if not revoked before the end of the 90-day period referred to in such paragraph.

(5) A person who is not married when he becomes eligible to participate in the Plan but who later marries or acquires a dependent child may elect to participate in the Plan, but his election must be written, signed by him, and received by the Secretary concerned within one year after he marries or acquires that dependent child. Such an election may not be revoked. His election is effective as of the first day of the first calendar month following the month in which his election is received by the Secretary concerned. In the case of a person providing an annuity by virtue of eligibility under paragraph (1)(B), such an election shall include a designation under subsection (e).

(b) A person who is not married and does not have a dependent child when he becomes eligible to participate in the Plan may elect to provide an annuity to a natural person with an insurable interest in that person. In the case of a person providing an annuity under this subsection by virtue of eligibility under subsection (a)(1)(B), such an election shall include a designation under subsection (e).

[*See main edition for text of* (c) *and* (d)]

(e) In any case in which a person electing to participate in the Plan is required to make a designation under this subsection, the person making such election shall designate whether, in the event he dies before becoming 60 years of age, the annuity provided shall become effective on the day after the date of his death or on the 60th anniversary of his birth.

(As amended Pub. L. 95-397, title II, § 202, Sept. 30, 1978, 92 Stat. 844.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-397, § 202(a), amended subsec. (a) generally, primarily adding provision that this subchapter shall be known as the Survivor Benefit Plan and provisions of pars. (1)(B), (2)(B) and concluding sentence, (3)(B), (4)(B), and last sentence of (5).

Subsec. (b). Pub. L. 95-397, § 202(b), substituted "entitled to retired or retainer pay" for "eligible to participate in the Plan" and added provisions relating to the inclusion in an election a designation under subsection (e) by persons providing an annuity under this subsection by virtue of eligibility under subsection (a)(1)(B).

Subsec. (e). Pub. L. 95-397, § 202(c), added subsec. (e).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-397 effective on Oct. 1, 1978, and is applicable to annuities payable by virtue of amendment for months beginning on or after such date, see section 210 of Pub. L. 95-397, set out as an Effective Date of 1978 Amendment note under section 1447 of this title.

INCOME SUPPLEMENT FOR CERTAIN WIDOWS OF RETIRED MEMBERS OF THE UNIFORMED FORCES; SPECIAL ANNUITY FOR WIDOWS OF COMMISSIONED PERSONNEL OF THE PUBLIC HEALTH SERVICE AND NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION IN LIEU OF VA PENSION

Section 4 of Pub. L. 92-425, as amended by Pub. L. 94-496, § 2, Oct. 14, 1976, 90 Stat. 2375; Pub. L. 95-397, title II, § 209, Sept. 30, 1978, 92 Stat. 848, provided that:

"(a) A person—

[*See main edition for text of (1) and (2)*]

"(3) whose annual income, as determined in establishing that eligibility, is less than $2,340;

shall be paid an annuity by the Secretary concerned unless she is eligible to receive an annuity under the Survivor Benefit Plan established pursuant to clause (3) of the first section of this Act [this subchapter]. However, such a person who is the widow of a retired officer of the Public Health Service or the National Oceanic and Atmospheric Administration, and who would otherwise be eligible for an annuity under this section except that she does not qualify for the pension described in clause (2) of this subsection because the service of her deceased spouse is not considered active duty under section 101(21) of title 38, United States Code, is entitled to an annuity under this section.

"(b) The annuity under subsection (a) of this section shall be in an amount which when added to the widow's income determined under subsection (a)(3) of this section, plus the amount of any annuity being received under sections 1431-1436 of title 10, United States Code, but exclusive of a pension described in subsection (a)(2) of this section, equals $2,340 a year. In addition, the Secretary concerned shall pay to the widow, described in the last sentence of subsection (a) of this section, an amount equal to the pension she would otherwise have been eligible to receive under subchapter III of chapter 15 of title 38, United States Code, if the service of her deceased spouse was considered active duty under section 101(21) of that title [section 101(21) of Title 38].

"(c) The amounts specified in subsections (a)(3) and (b) shall be increased by the Secretary concerned whenever there is an increase in the limitation on annual income for purposes of eligibility for benefits under section 541(b) of title 38, United States Code. Any such increase under the preceding sentence shall be in the same amount, and shall have the same effective date, as such increase in limitation on annual income.

"(d) Subsection 1450(i) and section 1453 as added to title 10, United States Code, by clause 3 of the first section of this Act [as part of this subchapter], are applicable to persons covered by this section."

END OF 90-DAY PERIOD WITH RESPECT TO CERTAIN INDIVIDUALS

The 90-day period, referred to in subsec. (a)(2), (4)(B), with respect to certain individuals shall be considered to end at the end of the one-year period beginning on the effective date of this title, see section 208 of Pub. L. 95-397, set out as a note under section 1447 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1447, 1449 to 1452, 1455 of this title; title 38 section 410.

§ 1449. Mental incompetency of member

If a person to whom section 1448 of this title applies is determined to be mentally incompetent by medical officers of the armed force concerned or of the Veterans' Administration, or by a court of competent jurisdiction, any election described in subsection (a)(2) or (b) of section 1448 of this title may be made on behalf of that person by the Secretary concerned. If the person for whom the Secretary has made an election is later determined to be mentally competent by an authority named in the first sentence, he may, within 180 days after that determination revoke that election. Any deductions made from retired or retainer pay by reason of such an election will not be refunded.

(As amended Pub. L. 95-397, title II, § 207(a), Sept. 30, 1978, 92 Stat. 848.)

AMENDMENTS

1978—Pub. L. 95-397 substituted "subsection (a)(2) or (b)" for "the first sentence of subsection (a), or subsection (b)".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-397 effective on Oct. 1, 1978, and is applicable to annuities payable by virtue of amendment for months beginning on or after such date, see section 210 of Pub. L. 95-397, set out as an Effective Date of 1978 Amendment note under section 1447 of this title.

§ 1450. Payment of annuity: beneficiaries

(a) Effective as of the first day after the death of a person to whom section 1448 of this title applies (or on such other day as he may provide under subsection (j)), a monthly annuity under section 1451 of this title shall be paid to—

[*See main edition for text of (1) to (4); (b) and (c)*]

(d) If, upon the death of a person to whom section 1448 of this title applies, that person had in effect a waiver of his retired or retainer pay for the purposes of subchapter III of chapter 83 of title 5, an annuity under this section shall not be payable unless, in accordance with section 8339(j) of title 5, he notified the Civil Service Commission that he did not desire any spouse surviving him to receive an annuity under section 8341(b) of that title.

[*See main edition for text of (e)*]

(f) An unmarried person who elects to provide an annuity to a person designated by him under subsection (a)(4), but who later marries or acquires a dependent child, may change that election and provide an annuity to his spouse or dependent child. A change of election under this subsection is subject to the rules with respect to execution, revocation, and effectiveness set forth in section 1448(a)(5) of this title.

[*See main edition for text of (g) to (i)*]

(j) An annuity elected by any person providing an annuity by virtue of eligibility under section 1448(a)(1)(B) of this title shall be effective in accordance with the designation made by such person under section 1448(e) of this title.

(k) If a widow or widower whose annuity has been adjusted under subsection (c) subsequently loses entitlement to compensation under section 411(a) of title 38 because of the remarriage of such widow or widower, and if at the time of such remarriage such widow or widower is 60 years of age or more, the amount of the annuity of such widow or widower shall be readjusted, effective on the effective date of such loss of compensation, to the amount of the annuity which would be in effect with respect to such widow or widower if the adjustment under subsection (c) had never been made, but such readjustment may not be made until the widow or widower repays any amount refunded under subsection (e) by reason of the adjustment under subsection (c).

(As amended Pub. L. 95-397, title II, §§ 203, 207(b), (c), Sept. 30, 1978, 92 Stat. 845, 848.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-397, § 203(1), added "(or on such other day as he may provide under subsection (j))" following "death of a person to whom section 1448 of this title applies".

Subsec. (d). Pub. L. 95-397, § 207(b), substituted "section 8339(j)" for "section 8339(i)".

Subsec. (f). Pub. L. 95-397, § 207(c), substituted "section 1448(a)(5)" for "the last three sentences of section 1448(a)".

Subsec. (j), (k). Pub. L. 95-397, § 203(2), added subsecs. (j) and (k).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-397 effective on Oct. 1, 1978, and is applicable to annuities payable by virtue of amendment for months beginning on or after such date, see section 210 of Pub. L. 95-397, set out as an Effective Date of 1978 Amendment note under section 1447 of this title.

TRANSFER OF FUNCTIONS

All functions vested by statute in the United States Civil Service Commission were transferred to the Director of the Office of Personnel Management (except as otherwise specified) by Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3784, set out under section 1101 of Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1448, 1451, 1452 of this title; title 38 section 410.

§ 1451. Amount of annuity

(a) The monthly annuity payable to a widow, widower, or dependent child who is entitled under section 1450(a) of this title to an annuity shall be—

(1) 55 percent of the base amount, if the annuity is provided by virtue of eligibility under section 1448(a)(1)(A) of this title, or

(2) a lesser percentage (determined by the Secretary of Defense in accordance with subsection (d)) of the base amount, if the annuity is provided by virtue of eligibility under section 1448(a)(1)(B) of this title.

However, when the widow has one dependent child, the monthly annuity shall be reduced by an amount equal to the mother's benefit, if any, to which the widow would be entitled under subchapter II of chapter 7 of title 42 based solely upon service by the person concerned as described in section 410(*l*)(1) of title 42 and calculated assuming that the person concerned lived to age 65. When the widow or widower reaches age 62, or there is no longer a dependent child, whichever occurs later, the monthly annuity shall be reduced by an amount equal to the amount of the survivor benefit, if any, to which the widow or widower would be entitled under subchapter II of chapter 7 of title 42 based solely upon service by the person concerned as described in section 410(*l*)(1) of title 42 and calculated assuming that the person concerned lived to age 65. For the purpose of the preceding sentence, a widow or widower shall not be considered as entitled to a benefit under subchapter II of chapter 7 of title 42 to the extent that such benefit has been offset by deductions under section 403 of title 42 on account of work.

(b) The monthly annuity payable under section 1450(a)(4) of this title shall be—

(1) 55 percent of the retired or retainer pay of the person who elected to provide that annuity after the reduction in such pay in accordance with section 1452(c) of this title, if the annuity is provided by virtue of eligibility under section 1448(a)(1)(A) of this title; or

(2) a lesser percentage (determined by the Secretary of Defense in accordance with subsection (d)) of the retired pay of the person who elected to provide that annuity after the reduction in such pay in accordance with section 1452(c) of this title, if the annuity is provided by virtue of eligibility under section 1448(a)(1)(B) of this title.

A person who provides an annuity which is determined in accordance with clause (2) and who dies before becoming 60 years of age and is otherwise entitled to retired pay shall be considered to have been entitled to retired pay, for the purpose of such clause, at the time of his death, and the retired pay of such person for the purpose of such clause shall be computed on the basis of the rates of basic pay in effect on the date on which the annuity is to become effective in accordance with the designation of such person under section 1448(e) of this title.

[*See main edition for text of* (c)]

(d) The percentage to be applied by the Secretary of Defense in determining the amount of an annuity under subsection (a)(2) or (b)(2) shall be 55 percent reduced by such amount as the Secretary shall by regulation prescribe, taking into consideration the age of the person electing to provide the annuity at the time of such election, the difference in age between such person and the beneficiary of the annuity, whether such person provided for the annuity to become effective (in the event he died before becoming 60 years of age) on the day after his death or on the 60th anniversary of his birth,

appropriate group annuity tables, and such other factors as the Secretary considers relevant.

(As amended Pub. L. 95-397, title II, § 204, Sept. 30, 1978, 92 Stat. 846.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-397, § 204(a), (b), substituted "The monthly annuity payable to a widow, widower, or dependent child who is entitled under section 1450(a) of this title to an annuity shall be—" for "If the widow or widower is under age 62 or there is a dependent child, the monthly annuity payable to the widow, widower, or dependent child, under section 1450 of this title shall be equal to 55 percent of the base amount.", and added subsec. (a)(1) and (2), and substituted "For the purpose of the preceding sentence, a widow or widower shall not be considered as entitled to a benefit under subchapter II of chapter 7 of title 42 to the extent that such benefit has been offset by deductions under section 403 of title 42 on account of work" for "For the purpose of the preceding sentence, a widow or widower shall be considered as entitled to a benefit under subchapter II of chapter 7 of title 42 even though that benefit has been offset by deductions under section 403 of title 42 on account of work".

Subsec. (b). Pub. L. 95-397, § 204(c), substituted "(b) The monthly annuity payable under section 1450(a)(4) of this title shall be—" for "(b) The monthly annuity payable under section 1450(a)(4) of this title shall be 55 percent of the retired or retainer pay of the person who elected to provide that annuity after the reduction in that retired or retainer pay in accordance with section 1452(c) of this title.", added subsec. (b)(1), (2) and provision following subsec. (b)(2) relating to the entitlement to retirement pay, and computation thereof, by a person who provided an annuity and who dies before becoming 60 years of age.

Subsec. (d). Pub. L. 95-397, § 204(d), added subsec. (d).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-397 effective on Oct. 1, 1978, and is applicable to annuities payable by virtue of amendment for months beginning on or after such date, see section 210 of Pub. L. 95-397, set out as an Effective Date of 1978 Amendment note under section 1447 of this title.

§ 1452. Reduction in retired or retainer pay

(a) Except as provided in subsection (b), the retired or retainer pay of a person to whom section 1448 of this title applies who has a spouse, or who has a spouse and a dependent child, and who has not elected to provide an annuity to a person designated by him under section 1450(a)(4) of this title, or who had elected to provide such an annuity to such a person but has changed his election in favor of his spouse under section 1450(f) of this title, shall be reduced each month—

(1) by an amount equal to 2½ percent of the first $300 of the base amount plus 10 percent of the remainder of the base amount, if the person is providing an annuity by virtue of eligibility under section 1448(a)(1)(A) of this title; or

(2) by an amount prescribed under regulations of the Secretary of Defense, if the person is providing an annuity by virtue of eligibility under section 1448(a)(1)(B).

As long as there is an eligible spouse and a dependent child, that amount shall be increased by an amount prescribed under regulations of the Secretary of Defense. The reduction in retired or retainer pay prescribed by the first sentence of this subsection shall not be applicable during any month in which there is no eligible spouse beneficiary.

[*See main edition for text of (b)*]

(c) The retired or retainer pay of a person who has elected to provide an annuity to a person designated by him under section 1450(a)(4) of this title shall be reduced—

(1) in the case of a person providing the annuity by virtue of eligibility under section 1448(a)(1)(A) of this title, by 10 percent plus 5 percent for each full five years the individual designated is younger than that person; or

(2) in the case of a person providing the annuity by virtue of eligibility under section 1448(a)(1)(B) of this title, by an amount prescribed under regulations of the Secretary of Defense.

However, the total reduction under clause (1) may not exceed 40 percent. The reduction in retired or retainer pay prescribed by this section shall continue during the lifetime of the person designated under section 1450(a)(4) of this title or until the person receiving retired or retainer pay changes his election under section 1450(f) of this title.

[*See main edition for text of (d) to (f)*]

(As amended Pub. L. 95-397, title II, § 205, Sept. 30, 1978, 92 Stat. 847.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-397, § 205(a), substituted subsec. (a)(1) and (2) for "by an amount equal to 2½ percent of the first $300 of the base amount plus 10 percent of the remainder of the base amount" following "shall be reduced each month".

Subsec. (c). Pub. L. 95-397, § 205(b), substituted subsec. (c)(1) and (2) for "by 10 percent plus 5 percent for each full 5 years the individual designated is younger than that person. However, the total reduction may not exceed 40 percent. The reduction in retired or retainer pay prescribed by this subsection shall continue during the lifetime of the person designated under section 1450(a)(4) of this title or until the person receiving retired or retainer pay changes his election under section 1450(f)", and added provision following par. (2) that the total reduction under clause (1) may not exceed 40 percent, and that the reduction in retired or retainer pay shall continue during the lifetime of the person designated under section 1450(a)(4) of this title or until the person changes his election under section 1450(f) of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-397 effective on Oct. 1, 1978, and is applicable to annuities payable by virtue of amendment for months beginning on or after such date, see section 210 of Pub. L. 95-397, set out as an Effective Date of 1978 Amendment note under section 1447 of this title.

TRANSFER OF FUNCTIONS

All functions vested by statute in the United States Civil Service Commission were transferred to the Director of the Office of Personnel Management (except as otherwise specified) by Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3784, set out under section 1101 of Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

CHAPTER 79—CORRECTION OF MILITARY RECORDS

§ 1552. Correction of military records: claims incident thereto

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 38 sections 1662, 3010; title 42 section 213a.

§ 1553. Review of discharge or dismissal

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 38 sections 1662, 3010, 3103; title 42 section 213a.

§ 1554. Review of retirement or separation without pay for physical disability

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 213a.

CHAPTER 81—CIVILIAN EMPLOYEES

§ 1581. Appointment: professional and scientific services

TRANSFER OF FUNCTIONS

All functions vested by statute in the United States Civil Service Commission were transferred to the Director of the Office of Personnel Management (except as otherwise specified) by Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3784, set out under section 1101 of Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§ 1586. Rotation of career-conditional and career employees assigned to duty outside the United States

TRANSFER OF FUNCTIONS

All functions vested by statute in the United States Civil Service Commission were transferred to the Director of the Office of Personnel Management (except as otherwise specified) by Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3784, set out under section 1101 of Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

PART III—TRAINING

Chap. Sec.
106. Educational Assistance for Enlisted Members of the Selected Reserve of the Ready Reserve 2131

AMENDMENTS

1977—Pub. L. 95-79, title IV, § 402(b), July 30, 1977, 91 Stat. 330, added chapter 106.

CHAPTER 102—JUNIOR RESERVE OFFICERS' TRAINING CORPS

§ 2031. Junior Reserve Officers' Training Corps

[*See main edition for text of* (a)]

(b) No unit may be established or maintained at an institution unless—

(1) the unit contains at least 100 physically fit students who are at least 14 years of age and are citizens or nationals of the United States;

[*See main edition for text of* (2) *to* (4); (c) *and* (d)]

(As amended Pub. L. 95-358, Sept. 8, 1978, 92 Stat. 592.)

AMENDMENTS

1978—Subsec. (b)(1). Pub. L. 95-358 added "or nationals" following "citizens".

CHAPTER 103—SENIOR RESERVE OFFICERS' TRAINING CORPS

§ 2102. Establishment

[*See main edition for text of* (a) *to* (c)]

(d) The President shall cause to be established and maintained in each State at least one unit of the program if—

(1) a unit is requested by an educational institution in the State;

(2) such request is approved by the Governor of the State in which the institution requesting the unit is located; and

(3) the Secretary of the military department concerned determines that there will be not less than 40 students enrolled in such unit and that the provisions of this section are otherwise satisfied.

(As amended Pub. L. 95-79, title VI, § 602, July 30, 1977, 91 Stat. 332.)

AMENDMENTS

1977—Subsec. (d). Pub. L. 95-79 added subsec. (d).

MILITARY TRAINING FOR FEMALE UNDERGRADUATES AT MILITARY COLLEGES; REGULATIONS

Pub. L. 95-485, title VIII, § 809, Oct. 20, 1978, 92 Stat. 1623, provided that:

"(a) The Secretary of Defense shall require that any college or university designated by the Secretary of Defense as a military college shall, as a condition of maintaining such designation, provide that qualified female undergraduate students enrolled in such college or university be eligible to participate in military training at such college or university, but, notwithstanding any other provision of law, the Secretary of Defense may not require that, as a condition of maintaining such designation or for any other purpose, such college or university require female undergraduate students enrolled in such college or university to participate in military training.

"(b) The Secretary of Defense shall prescribe such regulations as the Secretary determines necessary or appropriate to carry out the provisions of this section."

§ 2103. Eligibility for membership

LOYALTY OATH BY STUDENTS IN BASIC COURSES OF SENIOR DIVISION

Pub. L. 96-154, title VII, § 723, Dec. 21, 1979, 93 Stat. 1156, provided that: "No part of the funds appropriated herein [Department of Defense Appropriation Act, 1980] shall be expended for the support of any formally enrolled student in basic courses of the senior division, Reserve Officers' Training Corps, who has not executed a certificate of loyalty or loyalty oath in such form as shall be prescribed by the Secretary of Defense."

Similar provisions were contained in the following prior acts:

Oct. 13, 1978, Pub. L. 95-457, title VIII, § 823, 92 Stat. 1248.

Sept. 21, 1977, Pub. L. 95-111, title VIII, § 822, 91 Stat. 903.

Sept. 22, 1976, Pub. L. 94-419, title VII, § 722, 90 Stat. 1295.

§ 2107. Financial assistance program for specially selected members

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2104, 2106, 2133, 5504, 5652b, 6387 of this title; title 37 sections 209, 415, 416, 422.

CHAPTER 104—UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

Sec.
2115. Graduates: limitation on number permitted to perform civilian Federal service.

AMENDMENTS

1979—Pub. L. 96-107, title VIII, § 803(c)(3), Nov. 9, 1979, 93 Stat. 812, substituted "permitted" for "electing" and "service" for "duty".

§ 2112. Establishment

[*See main edition for text of* (a)]

(b) Except as provided in subsection (a), the numbers of persons to be graduated from the University shall be prescribed by the Secretary of Defense. In so prescribing the number of persons to be graduated from the University, the Secretary of Defense shall, upon recommendation of the Board of Regents, institute actions necessary to ensure the maximum number of first-year enrollments in the University consistent with the academic capacity of the University and the needs of the uniformed services for medical personnel.

[*See main edition for text of* (c)]

(As amended Pub. L. 96-107, title VIII, § 803(a), Nov. 9, 1979, 93 Stat. 811.)

AMENDMENTS

1979—Subsec. (b). Pub. L. 96-107 added provisions respecting the maximum number of first-year enrollments in the University.

§ 2113. Board of Regents

[*See main edition for text of* (a)]

(b) The term of office of each member of the Board (other than ex officio members) shall be six years except that—

(1) any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term;

(2) the terms of office of the members first taking office shall expire, as designated by the President at the time of the appointment, three at the end of two years, three at the end of four years, and three at the end of six years; and

(3) any member whose term of office has expired shall continue to serve until his successor is appointed.

[*See main edition for text of* (c) *to* (i)]

(As amended Pub. L. 95-589, Nov. 4, 1978, 92 Stat. 2512.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-589 added par. (3).

§ 2114. Students: selection; status; obligation

[*See main edition for text of* (a)]

(b) Students shall be commissioned officers of a uniformed service as determined under regulations prescribed by the Secretary of Defense after consulting with the Secretary of Health, Education, and Welfare. Notwithstanding any other provision of law, they shall serve on active duty in pay grade O-1 with full pay and allowances of that grade, but shall not be counted against any prescribed military strengths. Upon graduation they shall be appointed in a regular component, if qualified, unless they are covered by section 2115 of this title. Students who graduate shall be required, except as provided in section 2115 of this title, to serve thereafter on active duty under such regulations as the Secretary of Defense or the Secretary of Health, Education, and Welfare, as appropriate, may prescribe for not less than seven years, unless sooner released. The service credit exclusions specified in section 2126 of this title shall apply to students covered by this section.

[*See main edition for text of* (c) *and* (d)]

(As amended Pub. L. 96-107, title VIII, § 803(b), Nov. 9, 1979, 93 Stat. 812.)

AMENDMENTS

1979—Subsec. (b). Pub. L. 96-107 substituted "uniformed" for "uniform".

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

§ 2115. Graduates: limitation on number permitted to perform civilian Federal service

The Secretary of Defense may allow not more than 20 percent of the graduates of each class at the University to perform civilian Federal service for not less than seven years following the completion of their professional education in lieu of active duty in a uniformed service if the needs of the uniformed services do not require that such graduates perform active duty in a uniformed service and as long as the Secretary of Defense does not recall such persons to active duty in the uniformed services. Such persons who execute an agreement in writing to perform such civilian Federal service may be released from active duty following the completion of their professional education. The location and type of their duty shall be determined by the Secretary of Defense after consultation with the heads of Federal agencies concerned.

(As amended Pub. L. 96-107, title VIII, § 803(c)(1), (2), Nov. 9, 1979, 93 Stat. 812.)

AMENDMENTS

1979—Pub. L. 96-107, § 803(c)(2), in the section catchline substituted "permitted" for "electing" and "service" for "duty".

Pub. L. 96-107, § 803(c)(1), substituted provisions respecting authority of the Secretary of Defense to allow graduates to perform civilian Federal service and the execution of agreements for such service as prerequisites for release from active duty following com-

pletion of education, for provisions relating to limitations on the number of graduates electing to perform civilian Federal duty, agreements respecting such service, and release from active duty upon completion of their education.

CHAPTER 105—ARMED FORCES HEALTH PROFESSIONS SCHOLARSHIP

§ 2121. Establishment

[See main edition for text of (a) to (c)]

(d) Except when serving on active duty pursuant to subsection (c), a member of the program shall be entitled to a stipend at the rate in effect under paragraph (1)(B) of section 751(g) of the Public Health Service Act (42 U.S.C. 294t(g)) for students in the National Health Service Corps Scholarship program.

(As amended Pub. L. 96-107, title VIII, § 804(a), Nov. 9, 1979, 93 Stat. 812.)

AMENDMENTS

1979—Subsec. (d). Pub. L. 96-107 substituted provisions relating to entitlement to a stipend at the rate in effect for students in the National Health Services Corps Scholarship program, for provisions authorizing a stipend at the rate of $400 per month.

EFFECTIVE DATE OF 1979 AMENDMENT

Section 804(c) of Pub. L. 96-107 provided that: "The amendments made by this section [to this section and section 313 of Title 37, Pay and Allowances of the Uniformed Services] shall take effect on October 1, 1979."

§ 2123. Members of the program: active duty obligation; failure to complete training; release from program

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

§ 2127. Contracts for scholarships: payments

TRANSFER OF FUNCTIONS

Certain functions, relating generally to education, of the Department of Health, Education, and Welfare and the Secretary and other offices and divisions thereof were transferred to the Secretary of Education by section 3441 of Title 20, Education, and the Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20.

CHAPTER 106—EDUCATIONAL ASSISTANCE FOR ENLISTED MEMBERS OF THE SELECTED RESERVE OF THE READY RESERVE

Sec.
2131. Educational assistance program: establishment; amount.
2132. Eligibility for educational assistance.
2133. Termination of assistance; refund by member.
2134. Reports to Congress.
2135. Termination of program.

§ 2131. Educational assistance program: establishment; amount

(a) To encourage enlistments in units of the Selected Reserve of the Ready Reserve, the Secretary of each military department, under regulations prescribed by the Secretary of Defense, and the Secretary of Transportation, under regulations prescribed by him with respect to the Coast Guard when it is not operating as a service in the Navy, may establish and maintain a program to provide educational assistance to enlisted members of the Selected Reserve of the Ready Reserve of the armed force under his jurisdiction.

(b)(1) An educational assistance program established under subsection (a) shall provide for payment by the Secretary concerned of 100 percent of the educational expenses incurred by a member for instruction at an accredited institution. Expenses for which payment may be made under this section include tuition, fees, books, laboratory fees, and shop fees for consumable materials used as part of classroom or shop instruction. Payments under this section shall be limited to those educational expenses normally incurred by students at the institution involved.

(2) To receive assistance under this section, a member must be eligible for such assistance under section 2132 and must submit an application for such assistance in such form and manner as the Secretary concerned shall prescribe and be approved for such assistance by the Secretary concerned.

(c) Educational assistance may be provided to a member under this section until the member completes a course of instruction required for the award of a baccalaureate degree, or the equivalent evidence of completion of study, by an accredited institution, but the amount of educational assistance provided a member under this section may not exceed $500 in any twelve-month period, nor a total of $2,000.

(d) For purposes of this section, the term "accredited institution" means a civilian college, university, or trade, technical, or vocational school in the United States (including the District of Columbia, Puerto Rico, Guam, and the Virgin Islands) that provides education at the postsecondary level and that is accredited by a nationally recognized accrediting agency or association or by an accrediting agency or association recognized by the Commissioner of Education, Department of Health, Education, and Welfare.

(Added Pub. L. 95-79, title IV, § 402(a), July 30, 1977, 91 Stat. 328, and amended Pub. L. 96-107, title IV, § 402(a), Nov. 9, 1979, 93 Stat. 808.)

AMENDMENTS

1979—Subsec. (b)(1). Pub. L. 96-107 substituted "100 percent" for "50 percent".

EFFECTIVE DATE OF 1979 AMENDMENT

Section 402(c) of Pub. L. 96-107 provided that: "The amendments made by this section [to sections 2131 and 2133 of this title] shall apply only to individuals enlisting in the Reserves after September 30, 1979."

TRANSFER OF FUNCTIONS

All functions of the Commissioner of Education, Department of Health, Education, and Welfare, were transferred to the Secretary of Education by section 3441(a)(1) of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2132, 2133 of this title.

§ 2132. Eligibility for educational assistance

(a) To be eligible for educational assistance under section 2131, a member must not be serving on active duty for more than thirty days and must—

(1) be an enlisted member of the Selected Reserve of the Ready Reserve of an armed force;

(2) have initially enlisted as a Reserve for service in a unit of the Selected Reserve of a reserve component after September 30, 1977;

(3) never have served in an armed force before such enlistment;

(4) at the time of such enlistment have executed an agreement as prescribed by subsection (b);

(5) be a graduate from secondary school;

(6) have completed the initial period of active duty for training required of such member;

(7) if the member is assigned to a unit, be participating satisfactorily in training with such unit; and

(8) have served less than eight years as a Reserve.

(b)(1) An agreement referred to in subsection (a)(4) shall be in writing and shall provide that if the member accepts educational assistance under section 2131, the period of enlistment of such member shall be not less than six years and if the member is discharged for the purpose of accepting an appointment as an officer, the member shall remain a member of the Ready Reserve until the last day of the term of such enlistment.

(2) A member who enlists after September 30, 1977, but before regulations to carry out this chapter are promulgated shall be eligible for educational assistance under section 2131 if he is otherwise eligible for such assistance under subsection (a) and if he executes an agreement as described in paragraph (1) not later than one year after the date on which regulations to carry out this chapter are first promulgated.

(c) Educational assistance being provided a member under section 2131 may be continued to a member who otherwise continues to qualify for such assistance if such member—

(1) is discharged in order to accept an immediate appointment as an officer in the Ready Reserve; or

(2) is no longer a member of the Selected Reserve, if such member is a member of the Ready Reserve and has served at least six years in the Selected Reserve of the Ready Reserve.

(Added Pub. L. 95–79, title IV, § 402(a), July 30, 1977, 91 Stat. 329, and amended Pub. L. 95–485, title IV, § 402(a), Oct. 20, 1978, 92 Stat. 1613.)

AMENDMENTS

1978—Subsec. (b)(1). Pub. L. 95–485 substituted "not less than six years" for "automatically extended by two years" and "last day of the term" for "eighth anniversary".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2131, 2133 of this title.

§ 2133. Termination of assistance; refund by member

(a) Educational assistance being provided a member under section 2131 shall be terminated if—

(1) the member fails to participate satisfactorily in training with his unit, if he is a member of a unit;

(2) the member is separated from his armed force, unless he is separated in order to accept an immediate appointment as an officer in the Ready Reserve;

(3) the member completes eight years of service; or

(4) the member receives financial assistance under section 2107 as a member of the Senior Reserve Officers' Training Corps.

(b)(1) A member who fails to participate satisfactorily in training with his unit, if he is a member of a unit, during a term of enlistment for which the member entered into an agreement under section 2132(a)(4) of this title shall refund an amount computed under paragraph (2) unless the failure to participate in training was due to reasons beyond the control of the member. Any refund by a member under this section shall not affect the period of obligation of such member to serve as a Reserve.

(2) The amount of any refund under paragraph (1) shall be the amount equal to the product of—

(A) the number of months of obligated service remaining during that term of enlistment divided by the total number of months of obligated service of that term of enlistment; and

(B) the total amount of educational assistance provided to the member under section 2131 of this title.

(Added Pub. L. 95–79, title IV, § 402(a), July 30, 1977, 91 Stat. 329, and amended Pub. L. 96–107, title IV, § 402(b), Nov. 9, 1979, 93 Stat. 808.)

AMENDMENTS

1979—Subsec. (b). Pub. L. 96–107 redesignated existing provisions as par. (1) and, as so redesignated, added provisions respecting agreement for term of enlistment and substituted provisions relating to computation under par. (2), for provisions relating to computation under section 2131, and added par. (2).

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–107 applicable only to individuals enlisting in the Reserves after Sept. 30, 1979, see section 402(c) of Pub. L. 96–107, set out as an Effective Date of 1979 Amendment note under section 2131 of this title.

§ 2134. Reports to Congress

The Secretary of Defense shall submit a report to the Congress every three months stating the number of members of the Selected Reserve of the Ready Reserve receiving educational assistance under this chapter at the time of such report and listing each unit of the Selected Reserve of the Ready Reserve to which any such member is assigned at the time of such report. The first such report shall be submitted not later than December 31, 1977.

(Added Pub. L. 95–79, title IV, § 402(a), July 30, 1977, 91 Stat. 330.)

§ 2135. Termination of program

No educational assistance may be provided under this chapter to any person enlisting as a Reserve after September 30, 1980.

(Added Pub. L. 95-79, title IV, § 402(a), July 30, 1977, 91 Stat. 330, and amended Pub. L. 95-485, title IV, § 402(b), Oct. 20, 1978, 92 Stat. 1613.)

AMENDMENTS

1978—Pub. L. 95-485 substituted "September 30, 1980" for "September 30, 1978".

PART IV—SERVICE, SUPPLY, AND PROCUREMENT

CHAPTER 131—PLANNING AND COORDINATION

Sec.
2212. Transmission of annual military construction authorization request.

AMENDMENTS

1978—Pub. L. 95-356, title VIII, § 802(a)(2), Sept. 8, 1978, 92 Stat. 585, added item 2212.

§ 2203. Budget estimates

PRESIDENTIAL RECOMMENDATIONS RESPECTING MODIFICATIONS IN CRUISE MISSILE PROGRAM

Pub. L. 95-184, title II, § 203, Nov. 15, 1977, 91 Stat. 1382, provided that: "In authorizing funds under this Act [Pub. L. 95-184], Congress asserts its readiness to consider, in accordance with the processes set forth in the Congressional Budget and Impoundment Control Act of 1974 [section 1301 et seq. of Title 31, Money and Finance] and the Budget and Accounting Act, 1921 [section 1 et seq. of Title 31], such modifications in the United States cruise missile programs as the President may recommend to facilitate either negotiation or agreement in arms limitation or reduction talks."

REPORT TO CONGRESSIONAL COMMITTEES ON MATERIAL READINESS REQUIREMENTS FOR ARMED FORCES

Pub. L. 95-79, title VIII, § 812, July 30, 1977, 91 Stat. 336, provided that: "The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives, not later than February 15, 1978, a report setting forth quantifiable and measurable material readiness requirements for the Armed Forces, including the Reserve components thereof, the monthly readiness status of the Armed Forces, including the reserve components thereof, during fiscal year 1977, and any changes in such requirements and status projected for fiscal years 1978 and 1979 and in the five-year defense program. The Secretary of Defense shall also inform such committees of any subsequent changes in the aforementioned materiel readiness requirements and the reasons for such changes. The budget for the Department of Defense submitted to the Congress for fiscal year 1979 and subsequent fiscal years shall include data projecting the effect of the appropriations requested for materiel readiness requirements."

MODIFICATIONS IN UNITED STATES STRATEGIC ARMS PROGRAMS ON RECOMMENDATION OF PRESIDENT

Pub. L. 95-79, title VIII, § 813, July 30, 1977, 91 Stat. 337, provided that: "In authorizing procurement under section 101 of this Act and research and development under section 201 of this Act, Congress asserts its readiness to consider, in accordance with the processes set forth in the Congressional Budget and Impoundment Control Act of 1974 [section 1301 et seq. of Title 31, Money and Finance] and the Budget and Accounting Act, 1921 [section 1 et seq. of Title 31], such modifications in United States strategic arms programs as the President may recommend to facilitate either negotiation or agreement in the Strategic Arms Limitation Talks."

§ 2208. Working-capital funds

SALE OF INVENTORIES FOR PERFORMANCE OF CONTRACTS WITH DEFENSE DEPARTMENT

Pub. L. 96-154, title VII, § 767, Dec. 21, 1979, 93 Stat. 1163, provided that: "Supplies available in inventories financed by working capital funds established pursuant to section 2208 of title 10, United States Code, may hereafter [Dec. 21, 1979] be sold to contractors for use in performing contracts with the Department of Defense."

§ 2212. Transmission of annual military construction authorization request

The Secretary of Defense shall transmit to the Congress the annual request for military construction authorization for a fiscal year during the first ten days after the President transmits to the Congress the Budget for such fiscal year pursuant to section 201 of the Budget and Accounting Act, 1921 (31 U.S.C. 11).

(Added Pub. L. 95-356, title VIII, § 802(a)(1), Sept. 8, 1978, 92 Stat. 585.)

EFFECTIVE DATE

Section 802(b) of Pub. L. 95-356 provided that: "The amendments made by subsection (a) [enacting this section] shall apply with respect to fiscal year 1980 and each fiscal year thereafter".

CHAPTER 133—FACILITIES FOR RESERVE COMPONENTS

§ 2233. Acquisition

(a) Subject to sections 2233a, 2234, 2235, 2236, and 2238 of this title and subsection (c) of this section, the Secretary of Defense may—

[*See main edition for text of (1) and (2)*]

(3) contribute to any State or Territory, Puerto Rico, or the District of Columbia such amounts as he determines to be necessary to expand, rehabilitate, or convert facilities owned by it (or to acquire, construct, expand, rehabilitate, or convert additional facilities) made necessary by the conversion, redesignation, or reorganization of units of the Army National Guard of the United States or the Air National Guard of the United States authorized by the Secretary of the military department concerned;

(4) contribute to any State or Territory, Puerto Rico, or the District of Columbia such amounts for the acquisition, construction, expansion, rehabilitation, or conversion by it of additional facilities as he determines to be required by any increase in the strength of the Army National Guard of the United States or the Air National Guard of the United States; and

(5) contribute to any State or Territory, Puerto Rico, or the District of Columbia, such amounts for the acquisition, construction, expansion, rehabilitation, or conversion by the failure of existing facilities to meet the purposes of this chapter. A contribution made for an armory may not be more than 75 per-

cent of the cost of construction of which it is applied.

[*See main edition for text of (b) to (f)*]

(As amended Nov. 26, 1979, Pub. L. 96-125, title VII, § 703, 93 Stat. 947.)

AMENDMENTS

1979—Subsec. (a). Pub. L. 96-125 added par. (5).

§ 2233a. Limitation

(1) No expenditure or contribution that is more than $175,000 may be made under section 2233 of this title for any facility until after the expiration of thirty days from the date upon which the Secretary of Defense or his designee notifies the Senate and the House of Representatives of the location, nature, and estimated cost of such facility. This requirement does not apply to the following:

[*See main edition for text of (a) to (b); (2)*]

(As amended Pub. L. 96-125, title VII, § 704, Nov. 26, 1979, 93 Stat. 947.)

AMENDMENTS

1979—Par. (1). Pub. L. 96-125 substituted "$175,000" for "$100,000".

CHAPTER 135—ENCOURAGEMENT OF AVIATION

§ 2276. Inspection and audit of plant and books of contractor; criminal provisions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 50 App. section 643.

CHAPTER 137—PROCUREMENT GENERALLY

§ 2304. Purchases and contracts: formal advertising; exceptions

CONVERSION DURING FISCAL YEAR 1980 OF COMMERCIAL AND INDUSTRIAL TYPE FUNCTIONS FROM DEFENSE DEPARTMENT PERSONNEL TO PRIVATE CONTRACTORS; REPORTING REQUIREMENTS

Pub. L. 96-107, title VIII, § 806, Nov. 9, 1979, 93 Stat. 813, provided that:

"(a) During fiscal year 1980, no commercial or industrial type function of the Department of Defense that on the date of the enactment of this Act [November 9, 1979] is being performed by Department of Defense personnel may be converted to performance by a private contractor—

"(1) to circumvent any civilian personnel ceiling; and

"(2) unless the Secretary of Defense shall provide to the Congress in a timely manner—

"(A) notification of any decision to study such commercial or industrial type function for possible performance by a private contractor, together with a certification that the government in-house cost calculation for the function is based on an estimate of the most efficient and cost effective organization for in-house performance;

"(B) if a decision is made to convert to contract performance, upon completing the study described in subparagraph (A) and before contracting for the performance of such function by a private contractor, a report showing—

"(i) the potential economic effect on employees affected, and the potential economic effect on the local community and Federal Government if more than 50 employees are involved, of contracting for performance of such function;

"(ii) the effect of contracting for performance of such function on the military mission of such function; and

"(iii) the amount of the bid accepted for the performance of such function by the private contractor whose bid is accepted and the cost of performance of such function by Department of Defense personnel, together with costs and expenditures which the Government will incur because of the contract.

"(b) The Secretary of Defense shall submit a written report to the Congress by February 1, 1980, describing the extent to which commercial and industrial type functions were performed by Department of Defense contractors during fiscal year 1979. The Secretary shall also include in such report an estimate of the percentage of commercial and industrial type functions of the Department of Defense that will be performed by Department of Defense personnel and the percentage of such functions that will be performed by private contractors during fiscal year 1980."

CONTRACT CLAIMS; REQUEST FOR EQUITABLE ADJUSTMENT; REQUEST FOR RELIEF; CERTIFICATION

Pub. L. 95-485, title VIII, § 813, Oct. 20, 1978, 92 Stat. 1624, provided that: "Notwithstanding any other provision of law, none of the funds authorized to be appropriated for the Department of Defense by this [Pub. L. 95-485] or any other Act shall be used for the purpose of paying any contract claim, request for equitable adjustment to contract terms, request for relief under Public Law 85-804 [sections 1431 et seq. of Title 50, War and National Defense], or other similar request, which exceeds $100,000 unless a senior company official in charge at the plant or location involved has certified at the time of submission of such contract claim, request for equitable adjustment to contract terms, request for relief under Public Law 85-804, or other similar request, that such claim or request is made in good faith and that the supporting data are accurate and complete to the best of such official's knowledge and belief. The requirements of this section shall not apply to claims, requests for equitable adjustment to contract terms, requests for relief under Public Law 85-804, or other similar requests submitted before the date of enactment of this Act [Oct. 20, 1978]."

REPORT TO CONGRESS BY SECRETARY OF DEFENSE; CHANGES IN POLICY OR REGULATIONS CONCERNING USE OF PRIVATE CONTRACTORS FOR COMMERCIAL OR INDUSTRIAL TYPE FUNCTION AT DEPARTMENT OF DEFENSE INSTALLATIONS; RESTRICTIONS

Pub. L. 95-485, title VIII, § 814, Oct. 20, 1978, 92 Stat. 1625, provided that:

"(a) The Secretary of Defense shall submit a report to the Committees on Armed Services of the Senate and House of Representatives providing the details of any proposed change in policy or regulations, from those in effect before June 30, 1976, regarding the determination of whether commercial or industrial type functions at Department of Defense installations located in any State, the District of Columbia, the Commonwealth of Puerto Rico, and Guam should be performed by Department of Defense personnel or by private contractors during the period beginning on October 1, 1978, and ending on September 30, 1979.

"(b) No commercial or industrial type function at any Department of Defense installation referred to in subsection (a) shall be performed by private contractors unless such contractor performance began before the date of the enactment of this Act [Oct. 20, 1978] or performance would have been allowed by the policy and regulations in effect before June 30, 1976. The prohibition in the preceding sentence shall apply until the end of the sixty-day period beginning on the date the report required by subsection (a) is received by the

Committees on Armed Services of the Senate and House of Representatives."

REPORTING REQUIREMENTS FOR SECRETARY OF DEFENSE AND PRIME CONTRACTORS CONCERNING PAYMENTS BY PRIME CONTRACTORS FOR WORK PERFORMED BY SUBCONTRACTORS

Pub. L. 95-111, title VIII, § 836, Sept. 21, 1977, 91 Stat. 906, provided that:

"(a) The Secretary of Defense shall require all prime contractors receiving contract awards of $500,000 or more from the Department of Defense to file a report with the Secretary at the end of the year showing the amount of Department of Defense work (in terms of dollars) each such contractor had performed by subcontractors during such year and to identify the State or States in which each subcontractor performed the work subcontracted to it.

"(b) The Secretary of Defense shall submit a report annually to the Congress showing, on a State-by-State basis, the total amount of Department of Defense funds paid to subcontractors, during the year for which the report is submitted, by the prime contractors described in subsection (a)."

PERFORMANCE REVIEW OF DEPARTMENT OF DEFENSE COMMERCIAL OR INDUSTRIAL FUNCTIONS

Pub. L. 95-79, title VIII, § 809, July 30, 1977, 91 Stat. 334, provided that:

"(a) The Secretary of Defense and the Director of the Office of Management and Budget shall jointly conduct a complete and comprehensive review of the criteria used in determining whether commercial or industrial type functions at Department of Defense installations located in any State, the District of Columbia, the Commonwealth of Puerto Rico, and Guam should be performed by Department of Defense personnel or by private contractors. The review shall include—

"(1) an evaluation of the basis for, and assumptions underlying, Department of Defense methods for conducting cost analyses with respect to decisions to contract for performance of commercial or industrial type functions;

"(2) an evaluation of the differences between private contractors and the Department of Defense in their procedures and policies relating to personnel compensation and other differences affecting their analysis of the cost of personnel;

"(3) identification of the defense mission essential functions identified by the Secretary of Defense as not suitable for performance by private contractors; and

"(4) an evaluation, to be made by the Director of the Office of Management and Budget, of all aspects of OMB Circular A-76 and of the implementation of such circular.

"(b) A detailed report describing the results of the review required by subsection (a) shall be submitted to the Committees on Armed Services of the Senate and House of Representatives before January 1, 1978. No commercial or industrial type function of the Department of Defense which on the date of enactment of this Act [July 30, 1977] is being performed by Department of Defense personnel shall be converted to performance by private contractors before the earlier of March 15, 1978, or the end of the 90-day period beginning on the date the report required by this section is received by such committees. The prohibition in the preceding sentence shall not apply to the conversion to performance by private contractors of any commercial or industrial type function at any Department of Defense installation referred to in subsection (a) if such conversion would have been made under policies and regulations in effect before June 30, 1976.

"(c)(1) The Secretary of Defense shall, before January 1, 1978, submit a report to the Committees on Armed Services of the Senate and House of Representatives (A) detailing the rationale of the Department of Defense for the establishment of goals for the percentage of work at defense research installations to be performed by private contractors, and (B) detailing the rationale for any direction in effect on the date of enactment of this Act [July 30, 1977] (i) establishing a minimum or maximum percentage for the allocation of work at any defense research installation to be performed by private contractors, or (ii) directing a change in any such allocation in effect on the date of enactment of this Act.

"(2) Until March 15, 1978, or the end of the 90-day period beginning on the date the report required by this subsection is received by such committees, whichever is earlier, the percentage of all research and exploratory development work to be performed at or by any Department of Defense research installation which is to be performed by private contractors may not exceed the percentage of such work that was performed by private contractors during the period beginning on July 1, 1975, and ending on September 30, 1976."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2305, 2306, 2310, 2311 of this title; title 50 sections 403c, 1432, 1651.

§ 2305. Formal advertisements for bids; time opening; award; rejection

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2302, 2356 of this title; title 42 section 1594; title 50 section 403c.

§ 2306. Kinds of contracts

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2310, 2311 of this title; title 50 section 403c.

§ 2307. Advance payments

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2310, 2311 of this title; title 50 section 403c.

§ 2308. Assignment and delegation of procurement functions and responsibilities

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 50 section 403c.

§ 2309. Allocation of appropriations

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 50 section 403c.

§ 2312. Remission of liquidated damages

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 50 section 403c.

§ 2313. Examination of books and records of contractors

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2310 of this title; title 50 section 403c.

CHAPTER 139—RESEARCH AND DEVELOPMENT

Sec.
2359. Salaries of officers of Federal contract research centers: reports to Congress

AMENDMENTS

1979—Pub. L. 96-107, title VIII, 819(a)(2), Nov. 9, 1979, 93 Stat. 819, added item 2359.

§ 2353. Contracts: acquisition, construction, or furnishing of test facilities and equipment

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 138, 2356 of this title; title 42 sections 241, 6981, 7404.

§ 2358. Research projects

FEDERAL CONTRACT RESEARCH CENTERS; OFFICERS' COMPENSATION; NOTIFICATION TO CONGRESS

Pub. L. 91-121, title IV, § 407, Nov. 19, 1969, 83 Stat. 208, formerly set out as a note under this section, which related to restrictions on use of appropriations for compensation of officers and employees of Federal contract research centers, and notice requirements respecting such payments, was repealed by Pub. L. 96-107, title VIII, § 819(c), Nov. 9, 1979, 93 Stat. 819. See section 2359 of this title.

§ 2359. Salaries of officers of Federal contract research centers: reports to Congress

The Secretary of Defense shall notify the Congress not later than January 31 of each year of any officer or employee of a Federal contract research center the amount of whose compensation paid out of Federal funds during the preceding calendar year exceeded the annual rate of basic pay authorized (without regard to any limitation on the payment of such pay) for level II of the Executive Schedule under section 5313 of title 5 on the last day of such year. Such notification shall include a detailed statement of the reasons for the payment of such amount of compensation to each such officer or employee.

(Added Pub. L. 96-107, title VIII, § 819(a)(1), Nov. 9, 1979, 93 Stat. 818.)

INITIAL NOTIFICATION REQUIRED BY JAN. 31, 1980

Section 819(b) of Pub. L. 96-107 provided that: "The first notification under section 2359 of title 10, United States Code, as added by subsection (a), shall be made not later than January 31, 1980."

CHAPTER 141—MISCELLANEOUS PROCUREMENT PROVISIONS

Sec.
2390. Suggestions for improving procurement policies.

AMENDMENTS

1977—Pub. L. 95-79, title VIII, § 815(b), July 30, 1977, 91 Stat. 338, added item 2390.

§ 2382. Aircraft: contract requirements

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7343 of this title; title 50 App. section 1212.

§ 2388. Liquid fuels: contracts for storage, handling, and distribution

PURCHASES OF GASOHOL AS FUEL FOR MOTOR VEHICLES

Pub. L. 96-107, title VIII, § 815, Nov. 9, 1979, 93 Stat. 817, provided that: "To the maximum extent feasible and consistent with overall defense needs and sound vehicle management practices, as determined by the Secretary of Defense, the Department of Defense is authorized and directed to enter into contracts by competitive bid, subject to appropriations, for the purchase of domestically produced alcohol or alcohol-gasoline blends containing at least 10 percent domestically produced alcohol for use in motor vehicles owned or operated by the Department of Defense."

§ 2390. Suggestions for improving procurement policies

(a) The Secretary of Defense shall request each commissioned officer, and each civilian employee above grade GS-12, who is scheduled for retirement and who is, or was at any time within one year prior to such scheduled retirement, assigned to, or employed in, military procurement to submit suggestions for methods to improve procurement policies, including suggestions for improving competitive bidding procedures and for reducing or eliminating any inequities that may exist. Such request shall be made of each such commissioned officer or employee not less than 30 days preceding his release from active duty or his separation. Submission of suggestions shall be at the option of each such commissioned officer or employee, and each such officer or employee shall be allowed reasonable time during working hours to prepare such suggestions, if such officer or employee chooses to make suggestions under this section.

(b) The Secretary of Defense shall submit a semiannual report to the Committees on Armed Services of the Senate and House of Representatives containing a copy of each suggestion submitted under subsection (a) during the preceding six-month period and the response of the Department of Defense to each such suggestion.

(Added Pub. L. 95-79, title VIII, § 815(a), July 30, 1977, 91 Stat. 337.)

REFERENCES IN TEXT

Grade GS-12, referred to in subsec. (a), is contained in the General Schedule, which is set out under section 5332 of Title 5, Government Organization and Employees.

CHAPTER 145—CATALOGING AND STANDARDIZATION

§ 2451. Defense supply management

STANDARDIZATION AND INTEROPERABILITY OF NATO WEAPONS

Pub. L. 94-361, title VIII, § 803, July 14, 1976, 90 Stat. 930 provided that:

"(a) It is the sense of Congress that weapons systems being developed wholly or primarily for employment in the North Atlantic Treaty Organization theater shall conform to a common North Atlantic Treaty Organization requirement in order to proceed toward joint doctrine and planning and to facilitate maximum feasible standardization and interoperability of equipment. A common North Atlantic Treaty Organization requirement shall be understood to include a common definition of the military threat to the North Atlantic Treaty Organization countries. The Secretary of Defense shall, in the reports required by section 302(c) of Public Law 93-365, as amended [set out as a note below], identify those programs in research and development for United States forces in Europe and the common North Atlantic Treaty Organization requirements which such programs support. In the absence of such common requirement, the Secretary shall include a discussion of the actions taken within the North Atlantic Alliance in pursuit of a common requirement. The Secretary of Defense shall also report on efforts to establish a regular procedure and mechanism within the North Atlantic Treaty Organization for determining common military requirements.

"(b) It is the sense of the Congress that progress toward the realization of the objectives of standardiza-

tion and interoperability would be enhanced by expanded inter-Allied procurement of arms and equipment within the North Atlantic Treaty Organization. It is further the sense of the Congress that expanded inter-Allied procurement would be facilitated by greater reliance on licensing and coproduction agreements among the signatories of the North Atlantic Treaty. It is the Congress' considered judgment that such agreements, if properly constructed so as to preserve the efficiencies associated with economies of scale, could not only minimize potential economic hardship to parties to such agreements but also increase the survivability, in time of war, of the Alliance's armaments production base by dispersing manufacturing facilities. Accordingly, the Secretary of Defense, in conjunction with appropriate representatives of other members of the Alliance, shall attempt to the maximum extent feasible (1) to identify areas for such cooperative arrangements and (2) to negotiate such agreements pursuant to these ends. The Secretary of Defense shall include in the report to the Congress required by section 302(c) of Public Law 93-365, as amended [set out as a note below], a discussion of the specific assessments made under the above provisions and the results achieved with the North Atlantic Treaty Organization allies.

"(c) It is the sense of the Congress that standardization of weapons and equipment within the North Atlantic Alliance on the basis of a 'two-way street' concept of cooperation in defense procurement between Europe and North America could only work in a realistic sense if the European nations operated on a united and collective basis. Accordingly, the Congress encourages the governments of Europe to accelerate their present efforts to achieve European armaments collaboration among all European members of the Alliance."

Pub. L. 94-106, title VIII, § 814(a), (b), Oct. 7, 1975, 89 Stat. 540, as amended Pub. L. 94-361, title VIII, § 802, July 14, 1976, 90 Stat. 930, provided that:

"(a)(1) It is the policy of the United States that equipment procured for the use of personnel of the Armed Forces of the United States stationed in Europe under the terms of the North Atlantic Treaty should be standardized or at least interoperable with equipment of other members of the North Atlantic Treaty Organization. In carrying out such policy the Secretary of Defense shall, to the maximum feasible extent, initiate and carry out procurement procedures that provide for the acquisition of equipment which is standardized or interoperable with equipment of other members of the North Atlantic Treaty Organization whenever such equipment is to be used by personnel of the Armed Forces of the United States stationed in Europe under the terms of the North Atlantic Treaty. Such procedures shall also take into consideration the cost, functions, quality, and availability of the equipment to be procured. In any case in which equipment authorized to be procured under title I of this Act is utilized for the purpose of carrying out the foregoing policy, the Secretary of Defense shall report to Congress the full details of the nature and substance of any and all agreements entered into by the United States with any other member or members of the North Atlantic Treaty Organization providing for the acquisition of equipment manufactured outside the United States in exchange for, or as a part of, any other agreement by such member or members to acquire equipment manufactured in the United States. Such report shall be made by the Secretary within 30 days of the date of enactment of this Act [July 14, 1976].

"(2) Whenever the Secretary of Defense determines that it is necessary, in order to carry out the policy expressed in paragraph (1) of this subsection, to procure equipment manufactured outside the United States, he is authorized to determine, for the purposes of section 2 of title III of the Act of March 3, 1933 (47 Stat. 1520; 41 U.S.C. 10a), that the acquisition of such equipment manufactured in the United States is inconsistent with the public interest.

"(3) In any case in which the Secretary of Defense initiates procurement action on a new major system which is not standard or interoperable with equipment of other members of the North Atlantic Treaty Organization, he shall report that fact to the Congress in the annual report required under section 302(c) of Public Law 93-365, as amended [set out as a note below], including a description of the system to be procured and the reasons for that choice.

"(b) The report required under section 302(c) of Public Law 93-365 [set out as a note below] shall include a listing of the initiation of procurement action on any new major system not in compliance with the policy set forth in section (a)."

Pub. L. 93-365, title III, § 302(c), Aug. 5, 1974, 88 Stat. 402, as amended Pub. L. 94-106, title VIII, § 814(c), Oct. 7, 1975, 89 Stat. 540, provided that:

"The Secretary of Defense shall undertake a specific assessment of the costs and possible loss of nonnuclear combat effectiveness of the military forces of the North Atlantic Treaty Organization countries caused by the failure of the North Atlantic Treaty Organization members, including the United States, to standardize weapons systems, ammunition, fuel, and other military impedimenta for land, air, and naval forces. The Secretary of Defense shall also develop a list of standardization actions that could improve the overall North Atlantic Treaty Organization nonnuclear defense capability or save resources for the alliance as a whole. He shall also evaluate the relative priority and effect of each such action. The Secretary shall submit the results of these assessments and evaluations to the Congress and subsequently shall also cause them to be brought before the appropriate North Atlantic Treaty Organization bodies in order that the suggested actions and recommendations can become an integral part of the overall North Atlantic Treaty Organization review of force goals and development of force plans. The Secretary of Defense shall report annually, not later than January 31 of each year, to the Congress on the specific assessments and evaluations made under the above provisions as well as the results achieved with the North Atlantic Treaty Organization allies."

CHAPTER 151—ISSUE OF SERVICEABLE MATERIAL OTHER THAN TO ARMED FORCES

Sec.
2545. Transportation services: international Girl Scout events.

AMENDMENTS

1978—Pub. L. 95-492, § 2, Oct. 20, 1978, 92 Stat. 1642, added item 2545.

§ 2545. Transportation services: international Girl Scout events

(a) The Secretary of Defense is authorized, under such regulations as he may prescribe, to provide, without expense to the United States Government, transportation from the United States or military commands overseas, and return, on vessels of the Military Sealift Command or aircraft of the Military Airlift Command for (1) those Girl Scouts and officials certified by the Girl Scouts of the United States of America as representing the Girl Scouts of the United States of America at any International World Friendship Event or Troops on Foreign Soil meeting which is endorsed and approved by the National Board of Directors of the Girl Scouts of the United States of America and is conducted outside of the United States, (2) United States citizen delegates coming from outside of the United States to triennial meetings of the National Council of the Girl Scouts of the United States of America, and (3) the

equipment and property of such Girl Scouts and officials, to the extent that such transportation will not interfere with the requirements of military operations.

(b) Before furnishing any transportation under subsection (a), the Secretary of Defense shall take from the Girl Scouts of the United States of America a good and sufficient bond for the reimbursement to the United States by the Girl Scouts of the United States of America, of the actual costs of transportation furnished under subsection (a).

(c) Amounts paid to the United States to reimburse it for the actual costs of transportation furnished under subsection (a) shall be credited to the current applicable appropriations or funds to which such costs were charged and shall be available for the same purposes as such appropriations or funds.

(Added Pub. L. 95-492, § 1, Oct. 20, 1978, 92 Stat. 1642.)

CHAPTER 157—TRANSPORTATION

Sec.
2632. Transportation to and from certain places of employment and on military installations.

AMENDMENTS

1979—Pub. L. 96-125, title VIII, § 807(c)(2), Nov. 26, 1979, 93 Stat. 950, in item 2632 inserted "and on military installations" following "places of employment".

§ 2632. Transportation to and from certain places of employment and on military installations

(a) Whenever the Secretary of a military department determines that it is necessary for the effective conduct of the affairs of that department, he may, at reasonable rates of fare under regulations to be prescribed by the Secretary of Defense, provide assured and adequate transportation by motor vehicle or water carrier—

(1) among places on any military installation (including any subinstallation thereof) under the jurisdiction of that department; and

(2) to and from their places of employment—

(A) for persons attached to, or employed in, that department; and

(B) during a war or national emergency declared by the Congress or the President, for persons attached to, or employed in, a private plant that is manufacturing material for that department.

(b)(1) Transportation may not be provided under subsection (a)(2) unless the Secretary concerned, or an officer of the department concerned designated by the Secretary, determines that—

(A) other facilities are inadequate and cannot be made adequate;

(B) a reasonable effort has been made to induce operators of private facilities to provide the necessary transportation; and

(C) the service to be furnished will make proper use of transportation facilities and will supply the most efficient transportation to the persons concerned.

(2)(A) The Secretary of Defense shall require that, in determining whether to provide transportation at any military installation under subsection (a)(1), the Secretary of the military department concerned shall give careful consideration to the potential for saving energy and reducing air pollution.

(B) In providing transportation at any military installation under such subsection, the Secretary of the military department concerned may not require any fare for the transportation of members of the armed forces if the transportation is incident to training or other operational activities on such installation.

(C) The authority under subsection (a)(1) to enter into contracts under which the United States is obligated to make outlays shall be effective for any fiscal year only to the extent that the budget authority for such outlays is provided in advance by appropriation Acts.

(c) To provide transportation under subsection (a), the department may—

(1) buy, lease, or charter motor vehicles or water carriers having a seating capacity of 12 or more passengers;

(2) maintain and operate that equipment by—

(A) enlisted members of the Army, Navy, Air Force, Marine Corps, or the Coast Guard, as the case may be;

(B) employees of the department concerned; and

(C) private persons under contract; and

[*See main edition for text of (3) and (d)*]

(As amended Sept. 11, 1978, Pub. L. 95-362, 92 Stat. 596; Nov. 9, 1979, Pub. L. 96-125, title VIII, § 807(a)-(c)(1), 93 Stat. 949.)

AMENDMENTS

1979—Pub. L. 96-125, § 807(c)(1), in section catchline inserted "and on military installations" following "places of employment".

Subsec. (a). Pub. L. 96-125, § 807(a), substituted reference to Secretary of a military department and to the Secretary of Defense for references to Secretary concerned and added reference to any military installation (including any subinstallation thereof) under the jurisdiction of that department.

Subsec. (b). Pub. L. 96-125, § 807(b), designated existing provisions as par. (1) and cls. (1) to (3) thereof as cls. (A) to (C) and, in par. (1) as so designated, substituted "subsection (a)(2)" for "subsection (a)" and added par. (2).

1978—Subsec. (a). Pub. L. 95-362, § 1(1), substituted "concerned" for "of a military department" and "of his department" for "of that department".

Subsec. (b). Pub. L. 95-362, § 1(2), struck out "of the military department" preceding "concerned".

Subsec. (c)(2)(A). Pub. L. 95-362, § 1(3), added reference to the Coast Guard.

§ 2635. Medical emergency helicopter transportation assistance and limitation of individual liability

CHANGE OF NAME

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

CHAPTER 159—REAL PROPERTY; RELATED PERSONAL PROPERTY; AND LEASE OF NON-EXCESS PROPERTY

Sec.
2674. Minor construction projects.
2686. Leases: military family housing.

Sec.
2687. Base closures and realignments.
2688. Use of solar energy systems in new facilities.

AMENDMENTS

1979—Pub. L. 96-125, title VIII, § 804(a)(2), Nov. 26, 1979, 93 Stat. 948, added item 2688.

1977—Pub. L. 95-82, title V, § 504(a)(2), title VI, §§ 608(b), 612(b), Aug. 1, 1977, 91 Stat. 371, 378, 380, substituted "Minor construction projects" for "Establishment and development of military facilities and installations costing less than $400,000" in item 2674 and added items 2686 and 2687.

§ 2662. Real property transactions: Reports to the Armed Services Committees

REDUCTION OR REALIGNMENT OF TRAINING BASES

Pub. L. 95-485, title VI, § 602, Oct. 20, 1978, 92 Stat. 1617, provided that:

"(a) Notwithstanding any other provision of law, no action may be taken to effect or implement any substantial reduction of the training base (as defined in subsection (c)) or any substantial force structure realignment of the training base planned as a part of the fiscal year 1979 Defense manpower program unless and until the provisions of subsection (b) are complied with.

"(b) No action described in subsection (a) with respect to a substantial reduction or realignment of the training base may be taken unless and until—

"(1) the Secretary of Defense or the Secretary of the military department concerned notifies the Committee on Armed Services and Appropriations of the Senate and House of Representatives in writing of the specific reduction or realignment proposed;

"(2) the Secretary of Defense or the Secretary of the military department concerned certifies that such reduction or realignment is in the best interest of the national security and provides for the most cost effective and efficient management of the training base, both in time of peace and in ability to meet mobilization requirements; and

"(3) a period of thirty legislative days expires following the date on which the notification and certification referred to in clauses (1) and (2) have been submitted to such committees, during which period no irrevocable action may be taken to effect or implement such reduction or realignment.

For the purpose of clause (3), a legislative day is a day in which either House of Congress is in session.

"(c) For the purposes of this section, the term 'training base' means the composite of installations, posts, camps, stations, and bases that have as a primary or secondary mission the conduct of formal entry level, advanced individual, or specialty training."

CLOSING OF FACILITIES; CLOSURES OR REALIGNMENTS PUBLICLY ANNOUNCED AFTER SEPTEMBER 30, 1977

Pub. L. 95-82, title VI, § 612(c), Aug. 1, 1977, 91 Stat. 380, provided that: "Section 611 of the Military Construction Authorization Act, 1966 (Public Law 89-188; 10 U.S.C. 2662 note), and section 612 of the Military Construction Authorization Act, 1977 (Public Law 94-431; 90 Stat. 1366) [which was not classified to the Code], shall be inapplicable in the case of any closure of a military installation, and any realignment with respect to a military installation, which is first publicly announced after September 30, 1977."

§ 2665. Sale of certain interests in land; logs

[See main edition for text of (a) to (c)]

(d) Appropriations of the Department of Defense available for operation and maintenance during a fiscal year may be reimbursed for all expenses of production of lumber and timber products pursuant to this section from amounts received as proceeds from the sale of any such property during such fiscal year.

(As amended Aug. 1, 1977, Pub. L. 95-82, title VI, § 610, 91 Stat. 378.)

AMENDMENTS

1977—Subsec. (d). Pub. L. 95-82 substituted provisions relating to reimbursement of production expenses during any fiscal year from proceeds from sales for property during such fiscal year, for provisions requiring proceeds from sales under subsecs. (a) or (b) of this section to be credited to the appropriations under which the property concerned was procured.

§ 2674. Minor construction projects

(a) Under such regulations as the Secretary of Defense may prescribe, the Secretary of a military department or the Director of a defense agency may acquire, construct, convert, extend, and install, at military installations and facilities, permanent or temporary public works not otherwise authorized by law including the preparation of sites and the furnishing of appurtenances, utilities, and equipment, but excluding the construction of family quarters.

(b) This section does not authorize a project costing more than $500,000, except that the cost authorized for a project may be increased above $500,000 by not more than 10 percent of the original approved cost of such project if the Secretary of Defense determines—

(1) that such an increase is required for the sole purpose of meeting unusual variations in cost, and

(2) that such variations in cost could not have been reasonably anticipated at the time the project was originally approved.

A project costing more than $400,000 must be approved in advance by the Secretary of Defense, and a project costing more than $300,000 must be approved in advance by the Secretary of the military department or the Director of the defense agency concerned. Approvals under the preceding sentence are not required for projects at specified locations that have been identified in the annual military construction program submitted by the Department of Defense to the Committees on Armed Services of the Senate and the House of Representatives.

(c) The total costs for all projects initiated under authority of this section by any military department, or by the defense agencies, in any fiscal year (except those projects funded from appropriations available for operations and maintenance as provided in subsection (e)) may not exceed the total amount authorized for minor construction projects for such military department or for the defense agencies, as the case may be, in the annual Military Construction Authorization Act for such fiscal year.

(d) Not more than $50,000 may be spent under this section during a fiscal year at any one installation or facility to convert structures to family quarters.

(e) Only funds appropriated to a military department or to the defense agencies for minor construction projects may be used by such department or by such agencies to accomplish minor construction projects, except that the Secretary of a military department or the Director of a defense agency may spend, from ap-

propriations available for maintenance and operations, amounts necessary for any project costing not more than $100,000 that is authorized under this section.

(f) The Secretary of each military department and the Secretary of Defense, for the defense agencies, shall submit an annual detailed report to the Committees on Armed Services and Appropriations of the Senate and House of Representatives on the administration of this section. In addition, such committees shall be notified in writing at least 30 days before any funds are obligated for a project approved under this section costing more than $300,000. Such notice is not required for projects at specified locations that have been identified in the annual military construction program submitted by the Department of Defense to the Committees on Armed Services of the Senate and the House of Representatives.

(g) As used in this section, "project" means a single undertaking which includes all construction work, land acquisition, and installation of equipment necessary to (1) accomplish a specific purpose, and (2) produce a complete and usable facility or a complete and usable improvement to an existing facility.

(h) The Directors of the defense agencies shall carry out the construction of minor projects under authority of this section by or through a military department designated by the Secretary of Defense as provided in section 2682 of this title.

(As amended Pub. L. 95–82, title VI, § 608(a), Aug. 1, 1977, 91 Stat. 377; Pub. L. 95–356, title VI, § 603(h)(1), Sept. 8, 1978, 92 Stat. 582; Pub. L. 96–125, title VIII, § 801, Nov. 26, 1979, 93 Stat. 947.)

AMENDMENTS

1979—Subsec. (b). Pub. L. 96–125 added provision that approvals under the preceding sentence are not required for projects at specified locations that have been identified in the annual military construction program submitted by the Department of Defense to the Committees on Armed Services of the Senate and the House of Representatives.

Subsec. (f). Pub. L. 96–125 added provision that such notice is not required for projects at specified locations that have been identified in the annual military construction program submitted by the Department of Defense to the Committees on Armed Services of the Senate and the House of Representatives.

1978—Subsec. (b). Pub. L. 95–356 added provisions relating to determinations by the Secretary of Defense for projects increasing in cost above the $500,000 level.

1977—Pub. L. 95–82 in the section catchline substituted "Minor construction projects" for "Establishment and development of military facilities and installations costing less than $400,000".

Subsec. (a). Pub. L. 95–82 added reference to a Director of a defense agency, and struck out provisions relating to determination of urgently needed projects.

Subsec. (b). Pub. L. 95–82 added reference to Director of the defense agency concerned, and substituted "$500,000" for "$400,000", "$400,000" for "$200,000", and "$300,000" for "$75,000".

Subsec. (c). Pub. L. 95–82 substituted provisions relating to total costs for all projects, for provisions prohibiting more than one allotment for any authorized project.

Subsec. (d). Pub. L. 95–82 reenacted provisions with minor changes in phraseology.

Subsec. (e). Pub. L. 95–82 substituted provisions relating to funds appropriated to a military department or defense agencies for minor construction projects and provisions authorizing not more than $100,000 to be spent from appropriations available for maintenance and operations for any project authorized under this section, for provisions relating to use of appropriations available for military construction under this section, and provisions authorizing not more than $75,000 to be spent from appropriations available for maintenance and operations for any project authorized under this section.

Subsec. (f). Pub. L. 95–82 added provision relating to the Secretary of Defense for the defense agencies and provisions requiring notification of committees concerned regarding projects costing more than $300,000.

Subsecs. (g), (h). Pub. L. 95–82 added subsecs. (g) and (h).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 603(h)(2) of Pub. L. 95–356 provided that: "The amendment made by this subsection [amending subsec. (b) of this section] shall take effect on October 1, 1978".

EFFECTIVE DATE OF 1977 AMENDMENT

Section 608(c) of Pub. L. 95–82 provided that: "The amendments made by this section [amending this section] shall become effective October 1, 1978."

LEASING OF HOUSING FACILITIES

Act July 15, 1955, ch. 368, 3515, 69 Stat. 352, as amended Aug. 3, 1956, ch. 939, title IV, § 412, 70 Stat. 1017; Aug. 30, 1957, Pub. L. 85–241, title IV, § 402, 71 Stat. 555; Aug. 20, 1958, Pub. L. 85–685, title V, § 509, 72 Stat. 662; Aug. 10, 1959, Pub. L. 86–149, title IV, § 407, 73 Stat. 321; June 27, 1961, Pub. L. 87–57, title VI, § 608, 75 Stat. 111; July 27, 1962, Pub. L. 87–554, title V, § 505, 76 Stat. 239; Nov. 7, 1963, Pub. L. 88–174, title V, § 505, 77 Stat. 325; Aug. 1, 1964, Pub. L. 88–390, title V, § 504, 78 Stat. 361; Sept. 16, 1965, Pub. L. 89–188, title V, § 504, 79 Stat. 813; Sept. 12, 1966, Pub. L. 89–568, title V, § 501, 80 Stat. 753; Oct. 21, 1967, Pub. L. 90–110, title VI, § 607, 81 Stat. 305; July 21, 1968, Pub. L. 90–408, title VI, § 606, 82 Stat. 388; Dec. 5, 1969, Pub. L. 91–142, title V, § 507, 83 Stat. 312; Oct. 26, 1970, Pub. L. 91–511, title V, § 506, 84 Stat. 1220; Oct. 27, 1971, Pub. L. 92–145, title V, § 506, 85 Stat. 407; Oct. 25, 1972, Pub. L. 92–545, title V, § 506, 86 Stat. 1149; Nov. 29, 1973, Pub. L. 93–166, title V, § 507(a), 87 Stat. 676; Dec. 27, 1974, Pub. L. 93–552, title V, § 507(a), 88 Stat. 1759; Oct. 7, 1975, Pub. L. 94–107, title V, § 506(a), 89 Stat. 561; Sept. 30, 1976, Pub. L. 94–431, title V, § 503(a), 90 Stat. 1360, which authorized the Secretaries of the Army, Navy, or Air Force to lease housing facilities for assignment as public quarters to military personnel and their dependents at or near any military installation in the United States, Puerto Rico, or Guam if there was a lack of adequate housing at or near such military installation, was repealed, effective Oct. 1, 1977, by Pub. L. 95–82, title V, § 504(b), Aug. 1, 1977, 91 Stat. 371. See section 2686 of this title.

§ 2675. Leases: foreign countries

(a) Notwithstanding any other provision of law, the Secretary of a military department may acquire by lease, in any foreign country, structures and real property relating thereto that are needed for military purposes. A lease under this section may not be for a period of more than five years, except that a lease under this section for military family housing facilities and real property relating thereto may be for a period of more than five years but may not be for a period of more than ten years.

(b) A lease may not be entered into under this section or any other provision of law for structures, family housing facilities, or related real property in any foreign country if the average

estimated annual rental during the term of the lease if more than $250,000 until after the expiration of thirty days from the date upon which a report of the facts concerning the proposed lease is submitted to the Committees on Armed Services of the Senate and House of Representatives.

[*See main edition for text of* (c)]

(d)(1) The average unit rental for Department of Defense family housing acquired by lease in foreign countries may not exceed $550 per month for the Department, and in no event shall the rental for any one unit exceed $970 per month, including the costs of operation, maintenance, and utilities. The Secretary of Defense may waive the cost limitations specified in the first sentence of this paragraph with respect to not more than 150 such units if such units are leased for incumbents of special positions or for personnel assigned to Defense Attaché Offices or are leased in countries where excessive costs of housing would cause undue hardship on Department of Defense personnel.

(2) Not more than 17,000 family housing units may be leased in foreign countries at any one time.

(As amended Pub. L. 95–82, title V, § 505(a), Aug. 1, 1977, 91 Stat. 371; Pub. L. 95–356, title V, § 503(b), Sept. 8, 1978, 92 Stat. 579; Pub. L. 96–125, title V, § 502(b), Nov. 26, 1979, 93 Stat. 940.)

AMENDMENTS

1979—Subsec. (d). Pub. L. 96–125 substituted in par. (1) "$550" for "$485" and "$970" for "$850" and in par. (2) "$17,000" for "18,000".

1978—Subsec. (d)(1). Pub. L. 95–356, § 503(b)(1), substituted "$485" for "$435" and "$850" for "$760".

Subsec. (d)(2). Pub. L. 95–356, § 503(b)(2), substituted "18,000" for "15,000".

1977—Subsec. (a). Pub. L. 95–82, § 505(a)(1), added provisions relating to military family housing facilities and real property related thereto.

Subsec. (b). Pub. L. 95–82, § 505(a)(2), added "or any other provision of law for structures, family housing facilities, or related real property in any foreign country," following "section".

Subsec. (d). Pub. L. 95–82, § 505(a)(3), added subsec. (d).

EFFECTIVE DATE OF 1977 AMENDMENT

Section 505(c) of Pub. L. 95–82 provided that: "The amendments made by subsection (a) [amending this section] and the repeal made by subsection (b) [repealing section 507(b) of Pub. L. 93–166 which was not classified to the Code] shall take effect October 1, 1977."

§ 2682. Facilities for defense agencies

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2674 of this title.

§ 2685. Adjustment of or surcharge on selling prices in commissary stores to provide funds for construction and improvement of commissary store facilities

[*See main edition for text of* (a)]

(b) The Secretary of a military department, under regulations established by him and approved by the Secretary of Defense, may use the proceeds from the adjustments or surcharges authorized by subsection (a) to acquire, construct, convert, expand, install, or otherwise improve commissary store facilities at defense installations and for related environmental evaluation and construction costs, including surveys, administration, overhead, planning, and design.

(As amended Pub. L. 95–82, title VI, § 614, Aug. 1, 1977, 91 Stat. 380.)

AMENDMENTS

1977—Subsec. (b). Pub. L. 95–82 struck out "within the United States" following "defense installations".

§ 2686. Leases: military family housing

(a) The Secretaries of the military departments are authorized to lease housing facilities for assignment as public quarters to military personnel and their dependents, without rental charge, at or near any military installation in the United States, Puerto Rico, or Guam, if the Secretary of Defense, or his designee, finds that there is a lack of adequate housing at or near such military installation and that—

(1) there has been a recent substantial increase in military strength and such increase is temporary,

(2) the permanent military strength is to be substantially reduced in the near future,

(3) the number of military personnel assigned is so small as to make the construction of family housing uneconomical,

(4) family housing is required for personnel attending service school academic courses on permanent change of station orders, or

(5) family housing has been authorized but is not yet completed or a family housing authorization request is in a pending military construction authorization bill.

(b) Housing facilities may be leased under subsection (a) on an individual unit basis, and not more than ten thousand such units may be so leased at any one time.

(c) Expenditures for the rental of such housing facilities, including the cost of utilities and maintenance and operation of such facilities, may not exceed—

(1) for housing facilities in the United States (other than Alaska, Hawaii, and Guam) and Puerto Rico, (A) an average of $310 per month for each military department, or (B) $475 per month for any one unit; and

(2) for housing facilities in Alaska, Hawaii, and Guam, (A) an average of $370 per month for each military department, or (B) $475 per month for any one unit.

(Added Pub. L. 95–82, title V, § 504(a)(1), Aug. 1, 1977, 91 Stat. 371, and amended Pub. L. 95–356, title V, § 503(a), Sept. 8, 1978, 92 Stat. 579; Pub. L. 96–125, title V, § 502(a), Nov. 26, 1979, 93 Stat. 940.)

AMENDMENTS

1979—Subsec. (c)(1)(A). Pub. L. 96–125 substituted "$310" for "$300".

1978—Subsec. (c)(1). Pub. L. 95–356, § 503(a)(1), substituted "$300" for "$280" and "$475" for "$450".

Subsec. (c)(2). Pub. L. 95–356, § 503(a)(2), substituted "$370" for "$350" and "$475" for "$450".

EFFECTIVE DATE

Section 504(c) of Pub. L. 95–82 provided that: "The amendments made by subsection (a) [enacting this section] and the repeal made by subsection (b) [repealing provisions set out as a note under section 2674 of this title] shall take effect October 1, 1977."

§ 2687. Base closures and realignments

(a) Notwithstanding any other provision of law, no action may be taken to effect or implement—

(1) the closure of any military installation;

(2) any realignment with respect to any military installation involving a reduction by more than one thousand, or by more than 50 percent, in the number of civilian personnel authorized to be employed at such military installation at the time the Secretary of Defense or the Secretary of the military department concerned notifies the Congress under subsection (b)(1) that such installation is a candidate for closure or realignment; or

(3) any construction, conversion, or rehabilitation at any military facility other than a military installation referred to in clause (1) or (2) (regardless of whether such facility is a military installation as defined in subsection (d)) which will or may be required as a result of the relocation of civilian personnel to such facility by reason of any closure or realignment to which clause (1) or (2) applies,

unless and until the provisions of subsection (b) are complied with.

(b) No action described in subsection (a) with respect to the closure of, or a realignment with respect to, any military installation may be taken unless and until—

(1) the Secretary of Defense or the Secretary of the military department concerned publicly announces, and notifies the Committees on Armed Services of the Senate and the House of Representatives in writing, that such military installation is a candidate for closure or realignment;

(2) the Secretary of Defense or the Secretary of the military department concerned complies with the requirements of the National Environmental Policy Act of 1969 with respect to the proposed closure or realignment;

(3) the Secretary of Defense or the Secretary of the military department concerned submits to the Committees on Armed Services of the Senate and House of Representatives his final decision to carry out the proposed closure or realignment and a detailed justification for such decision, including statements of the estimated fiscal, local economic, budgetary, environmental, strategic, and operational consequences of the proposed closure or realignment; and

(4) a period of sixty days expires following the date on which the justification referred to in clause (3) has been submitted to such committees, during which period no irrevocable action may be taken to effect or implement the decision.

(c) This section shall not apply to the closure of a military installation, or a realignment with respect to a military installation, if the President certifies to the Congress that such closure or realignment must be implemented for reasons of national security or a military emergency.

(d) As used in this section:

(1) "Military installation" means any camp, post, station, base, yard, or other facility under the authority of the Department of Defense—

(A) which is located within any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or Guam; and

(B) at which not less than three hundred civilian personnel are authorized to be employed.

Such term does not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects.

(2) "Civilian personnel" means direct-hire permanent civilian employees of the Department of Defense.

(3) "Realignment" includes any action which both reduces and relocates functions and civilian personnel positions, but does not include a reduction in force resulting from workload adjustments, reduced personnel or funding levels, skill imbalances, or other similar causes.

(e) Except as provided in subsection (c), this section shall apply to any closure of a military installation, and any realignment with respect to a military installation, which is first publicly announced after September 30, 1977.

(Added Pub. L. 95–82, title VI, § 612(a), Aug. 1, 1977, 91 Stat. 379, and amended Pub. L. 95–356, title VIII, § 805, Sept. 8, 1978, 92 Stat. 586.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (b)(2), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

AMENDMENTS

1978—Subsec. (d)(1)(B). Pub. L. 95–356 substituted "three hundred" for "five hundred".

§ 2688. Use of solar energy systems in new facilities

(a) The Secretary of Defense shall require that all new facilities (including family housing) placed under design after the date of the enactment of the Military Construction Authorization Act, 1980, shall include consideration of solar energy systems in those cases in which solar energy has the potential to save fossil-fuel-derived energy. All contracts for construction resulting from such design shall include the requirement to furnish and install solar energy systems if such systems can be shown to be cost effective.

(b) For the purposes of this section, a solar energy system shall be considered to be cost effective if the original investment cost differential can be recovered over the expected life of the facility.

(Added Pub. L. 96–125, title VIII, § 804(a)(1), Nov. 26, 1979, 93 Stat. 948.)

REFERENCES IN TEXT

The date of enactment of the Military Construction Authorization Act, 1980, referred to in subsec. (a), means the date of enactment of Pub. L. 96-125, Nov. 26, 1979, 93 Stat. 928, which was approved November 26, 1979.

CHAPTER 163—MILITARY CLAIMS

§ 2733. Property loss; personal injury or death: incident to noncombat activities of Department of Army, Navy, or Air Force

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2735, 2736 of this title; title 5 section 5564; title 31 section 724a; title 32 section 715; title 37 section 554.

§ 2734. Property loss; personal injury or death; incident to noncombat activities of the armed forces; foreign countries

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2733, 2735, 2736 of this title; title 31 section 724a; title 32 section 715; title 36 section 138b.

Subtitle B—Army

PART I—ORGANIZATION

CHAPTER 303—DEPARTMENT OF THE ARMY

§ 3013. Under Secretary of the Army; Assistant Secretaries of the Army

There are an Under Secretary of the Army and four Assistant Secretaries of the Army in the Department of the Army. They shall be appointed from civilian life by the President, by and with the advice and consent of the Senate. One of the Assistant Secretaries shall be the Assistant Secretary of the Army for Manpower and Reserve Affairs. He shall have as his principal duty the overall supervision of manpower and reserve component affairs of the Department of the Army. One of the Assistant Secretaries shall be the Assistant Secretary of the Army for Civil Works. He shall have as his principal duty the overall supervision of the functions of the Department of the Army relating to programs for conservation and development of the national water resources including flood control, navigation, shore protection, and related purposes.

(As amended Nov. 9, 1979, Pub. L. 96-107, title VIII, § 820(b), 93 Stat. 819.)

AMENDMENTS

1979—Pub. L. 96-107 substituted "four" for "five".

CHAPTER 305—THE ARMY STAFF

§ 3039. Inspector General; Provost Marshal General

CROSS REFERENCES

Inspector General Act of 1978, see Appendix to Title 5, Government Organization and Employees.

§ 3040. Deputy and assistant chiefs of branches

[See main edition for text of (a)]

(b) There is an Assistant Surgeon General appointed from the officers of the Dental Corps, as prescribed in section 3036 of this title. The Assistant Surgeon General is Chief of the Dental Corps and is responsible for making recommendations to the Surgeon General and through the Surgeon General to the Chief of Staff on all matters concerning dentistry and the dental health of the Army. An appointee who holds a lower regular grade shall be appointed in the regular grade of major general.

[See main edition for text of (c)]

(As amended Oct. 20, 1978, Pub. L. 95-485, title VIII, § 805(a), 92 Stat. 1621.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-485 inserted provision establishing the Assistant Surgeon General as Chief of the Dental Corps and making him responsible for recommendations to the Surgeon General and through the Surgeon General to the Chief of Staff on all matters concerning dentistry and dental health of the Army.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3031, 3081 of this title.

CHAPTER 307—THE ARMY

Sec.
[3071. Repealed.]
3081. Dental Corps: Chief, functions.

AMENDMENTS

1978—Pub. L. 95-485, title VIII, §§ 805(b)(2), 820(b), Oct. 20, 1978, 92 Stat. 1622, 1627, struck out item 3071, which read "Women's Army Corps: Director; Deputy Director; other positions" and added item 3081.

[§ 3071. Repealed. Pub. L. 95-485, title VIII, § 820(b), Oct. 20, 1978, 92 Stat. 1627]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 169; Sept. 7, 1962, Pub. L. 87-649, § 6(a)(2), (3), 76 Stat. 494; Nov. 8, 1967, Pub. L. 90-130, § 1(8)(C), 81 Stat. 374, prescribed the composition of the Women's Army Corps and provided for a Director, a Deputy Director, and other positions for the Women's Army Corps.

§ 3075. Regular Army: composition

(a) The Regular Army is the component of the Army that consists of persons whose continuous service on active duty in both peace and war is contemplated by law, and of retired members of the Regular Army.

(b) The Regular Army includes—

(1) the officers and enlisted members of the Regular Army;

(2) the professors, director of admissions, and cadets of the United States Military Academy; and

(3) the retired officers and enlisted members of the Regular Army.

(As amended Oct. 30, 1978, Pub. L. 95-551, § 2, 92 Stat. 2069.)

AMENDMENTS

1978—Subsec. (b)(2). Pub. L. 95-551 substituted "director of admissions" for "registrar".

§ 3081. Dental Corps: Chief, functions

(a) The Chief of the Dental Corps shall be an officer of that corps appointed as prescribed in section 3040 of this title.

(b) Under such regulations as the Secretary of the Army may prescribe, all dental functions of the Army shall be under the direction of the Chief of the Dental Corps. All matters relating to dentistry shall be referred to the Chief of the Dental Corps.

(c) The Chief of the Dental Corps shall—

(1) establish professional standards and policies for dental practice;

(2) initiate and recommend action pertaining to organization requirements and utilization of the Dental Corps and dental auxiliary strength, appointments, advancement, training assignments, and transfer of dental personnel; and

(3) serve as the adviser to the Office of the Surgeon General on all matters relating directly to dentistry.

(d) Under such regulations as the Secretary of the Army may prescribe, dental and dental auxiliary personnel throughout the Army shall be organized into units commanded by a designated Dental Corps Officer. Such officer will be directly responsible to the commander of installations, organizations, and activities for all professional and technical matters and such administrative matters as may be prescribed by regulation.

(Added Pub. L. 95-485, title VIII, § 805(b)(1), Oct. 20, 1978, 92 Stat. 1621.)

PART II—PERSONNEL

CHAPTER 331—STRENGTH

Sec.
3209. Regular Army: commissioned officers on active list; other branches.
[3215. Repealed.]

AMENDMENTS

1978—Pub. L. 95-485, title VIII, § 820(c)(5), Oct. 20, 1978, 92 Stat. 1627, substituted "other branches" for "other branches; Women's Army Corps" in item 3209 and struck out item 3215, which read "Regular Army: Women's Army Corps; warrant officers on active list; enlisted members on active duty".

§ 3202. Army: officers in certain commissioned grades

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3210, 3218 of this title.

§ 3204. Regular Army: commissioned officers on active list

The authorized strength of the Regular Army in commissioned officers on the active list is the sum of—

(1) the numbers authorized by sections 3205, 3206, and 3207 of this title;

(2) the number of permanent professors of the United States Military Academy authorized by section 4331 of this title and the director of admissions thereof; and

(3) the numbers in designated categories specifically authorized by law as additional numbers.

(As amended Oct. 30, 1978, Pub. L. 95-551, § 2, 92 Stat. 2069.)

AMENDMENTS

1978—Par. (2). Pub. L. 95-551 substituted "director of admissions" for "registrar".

§ 3205. Regular Army: commissioned officers on active list, exclusive of certain categories

(a) The authorized strength of the Regular Army in commissioned officers on the active list, exclusive of—

(1) members of the Army Nurse Corps;

(2) members of the Army Medical Specialist Corps;

(3) permanent professors and the director of admissions of the United States Military Academy; and

(4) members in designated categories specifically authorized by law as additional numbers;

is 49,500.

[*See main edition for text of* (b)]

(As amended Oct. 30, 1978, Pub. L. 95-551, § 2, 92 Stat. 2069.)

AMENDMENTS

1978—Subsec. (a)(3). Pub. L. 95-551 substituted "director of admissions" for "registrar".

§ 3209. Regular Army: commissioned officers on active list; other branches

Except for the Army Nurse Corps and the Army Medical Specialist Corps, the authorized strength of each branch in commissioned officers on the active list of the Regular Army is that prescribed by the Secretary of the Army. However, the strength so prescribed—

(1) for the Judge Advocate General's Corps, may not be less than 15/1,000 of the authorized strength of the Regular Army in commissioned officers on the active list; and

(2) for the Corps of Engineers, may not be less than 788.

(As amended Oct. 20, 1978, Pub. L. 95-485, title VIII, § 820(c)(1), (2), 92 Stat. 1627.)

AMENDMENTS

1978—Pub. L. 95-485 struck out in section catchline "; Women's Army Corps" following "other branches", deleted designation "(a)" preceding "Except for the Army Nurse", and struck out subsec. (b), which authorized the strength of the Women's Army Corps in commissioned officers on the active list of the Regular Army to be prescribed by the Secretary.

[§ 3215. Repealed. Pub. L. 95-485, title VIII, § 820(c)(3), Oct. 20, 1978, 92 Stat. 1627]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 176; Nov. 8, 1967, Pub. L. 90-130, § 1(9)(H), 81 Stat. 375, authorized the strength of the Women's Army Corps of the Regular Army in warrant officers on the active list and in enlisted members on active duty to be prescribed by the Secretary.

§ 3218. Reserves: strength in grade; general officers in active status

The authorized strength of the Army in reserve general officers in an active status, exclusive of those serving as adjutants general or assistant adjutants general of a State or Territory, Puerto Rico, the Canal Zone, or the Dis-

trict of Columbia, those serving in the National Guard Bureau, and those counted under section 3202 of this title, is 207.

(As amended Pub. L. 96-107, title III, § 302(a), Nov. 9, 1979, 93 Stat. 806.)

AMENDMENTS

1979—Pub. L. 96-107 added provisions authorizing applicability of those officers counted under section 3202 of this title.

§ 3219. Reserves; strength in grade; commissioned officers in grades below brigadier general in active status

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 3383 of this title.

§ 3220. Reserve officers: distribution

The Secretary of the Army shall distribute the number of reserve commissioned officers authorized in each commissioned grade between those assigned to reserve units organized to serve as units and those not assigned to such units. He shall distribute the number who are assigned to reserve units organized to serve as units among the units of each reserve component by prescribing appropriate tables of organization and tables of distribution. He shall distribute the number who are not assigned to such units between—

(1) each special branch; and

(2) all other branches taken together.

(As amended Pub. L. 95-485, title VIII, § 820(c)(4), Oct. 20, 1978, 92 Stat. 1627.)

AMENDMENTS

1978—Pub. L. 95-485 struck out in cl. (1) "and the Women's Army Corps" following "special branch".

CHAPTER 335—APPOINTMENTS IN THE REGULAR ARMY

Sec.
[3311. Repealed.]

AMENDMENTS

1978—Pub. L. 95-485, title VIII, § 820(d)(5), Oct. 20, 1978, 92 Stat. 1627, struck out item 3311, which read "Officers: female; limitations on appointment".

§ 3283. Commissioned officers: appointment without specification of branch; transfer between branches

(a) Appointments in commissioned grades in the Regular Army shall be made without specification of branch except in each of the special branches and as professors or director of admissions of the United States Military Academy.

(b) Commissioned officers appointed in the Regular Army without specification of branch shall be assigned, and may be transferred and reassigned, by the Secretary of the Army to branches other than the special branches, according to their professional qualifications and the needs of the Army.

(As amended Oct. 20, 1978, Pub. L. 95-485, title VIII, § 820(d)(1), 92 Stat. 1627; Oct. 30, 1978, Pub. L. 95-551, § 2, 92 Stat. 2069.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-551 substituted "director of admissions" for "registrar".

Pub. L. 95-485 struck out ", in the Women's Army Corps," following "special branches".

Subsec. (b). Pub. L. 95-485 struck out "and the Women's Army Corps" following "special branches".

§ 3296. Promotion lists: promotion-list officer defined; determination of place upon transfer or promotion

(a) The names of all commissioned officers in grades below brigadier general on the active list of the Regular Army, except those in special categories otherwise excluded under law, and professors and the director of admissions of the United States Military Academy, shall be carried on promotion lists in descending order of grade and rank in the Regular Army. These officers may be called "promotion-list officers".

(b) A separate promotion list shall be maintained for commissioned officers of the Regular Army in each of the following:

(1) The Chaplains.

(2) Each of the several branches of the Army Medical Department.

[*See main edition for text of* (c) *to* (e)]

(As amended Oct. 20, 1978, Pub. L. 95-485, title VIII, § 820(d)(2), 92 Stat. 1627; Oct. 30, 1978, Pub. L. 95-551, § 2, 92 Stat. 2069.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-551 substituted "director of admissions" for "registrar".

Subsec. (b). Pub. L. 95-485 redesignated former cl. (3) as (2) and struck out former cl. (2), which provided for a separate promotion list for the Women's Army Corps.

§ 3297. Selection boards

(a) Under such regulations as he may prescribe, the Secretary of the Army shall detail selection boards, to meet at times prescribed by him, to recommend promotion-list officers and brigadier generals of the Regular Army for promotion in the Regular Army. Each board shall be composed of at least five officers of the Regular Army who hold a regular or temporary grade above lieutenant colonel, and who are senior in regular grade to, and who outrank, any officer considered by that board. However, a selection board considering promotion-list officers of the Army Nurse Corps or the Army Medical Specialist Corps may include promotion-list officers who are in the same corps as the officers being considered by that board and whose regular or temporary grades are above major.

[*See main edition for text of* (b) *to* (e)]

(As amended Oct. 20, 1978, Pub. L. 95-485, title VIII, § 820(d)(3), 92 Stat. 1627.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-485 struck out "a selection board considering promotion-list officers of the Women's Army Corps under section 3300(a) or (b) of this title may include officers of the Regular Army in that corps whose regular or temporary grades are above major, and" preceding "a selection board".

[§ 3311. Repealed. Pub. L. 95-485, title VIII, § 820(d)(4), Oct. 20, 1978, 92 Stat. 1627]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 192; Sept. 2, 1958, Pub. L. 85-861, § 1(60), 72 Stat. 1462, provided that with the exception of those appointed as commissioned officers in the Medical Corps, Dental Corps, Medical Service Corps, Veterinary Corps, Army Nurse Corps, or Army Medical Specialist Corps, women be appointed as commissioned officers in the Regular Army only in the Women's Army Corps.

§ 3313. Suspension of laws for promotion or mandatory retirement or separation during war or emergency

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 50 section 1651.

CHAPTER 337—APPOINTMENTS AS RESERVE OFFICERS

§ 3363. Commissioned officers: selection boards; general procedure

[*See main edition for text of* (a) *to* (f)]

(g) Promotions of reserve commissioned officers of each special branch shall be made from reserve commissioned officers assigned to that branch. Promotions of reserve commissioned officers in any other branch shall be made from reserve commissioned officers who are not assigned to a special branch.

(As amended Pub. L. 95-485, title VIII, § 820(e)(1), Oct. 20, 1978, 92 Stat. 1627.)

AMENDMENTS

1978—Subsec. (g). Pub. L. 95-485 struck out "and the Women's Army Corps" following "each special branch", "or corps, as the case may be" following "that branch", and "or the Women's Army Corps" following "a special branch".

§ 3364. Commissioned officers: selection for promotion; order of promotion; zone of consideration list; declination of promotion

(a) When officers are considered for promotion under section 3366, 3367, 3370, or 3371 of this title, the names of reserve officers assigned to each special branch, except the Judge Advocate General's Corps, shall be placed on a separate zone of consideration list for, or be considered for promotion for service in, that branch or corps. The names of all other reserve officers shall be placed on a zone of consideration list, or considered for promotion, without regard to the branch to which they are assigned. The convening officer shall refer each list to a selection board for consideration.

(b) Except as provided in subsection (d), an officer in an active status who is assigned to a special branch, and who is recommended for promotion under section 3366, 3367, or 3370 of this title, may not be promoted before an officer of the same reserve grade and the same branch who is in an active status, who has more service computed under section 3360(b) of this title, who has been recommended for promotion, and who is not assigned to a unit organized to serve as a unit.

(c) Except as provided in subsection (d), an officer who is not assigned to a special branch, and who is recommended for promotion under section 3366, 3367, or 3370 of this title, may not be promoted before an officer of the same reserve grade in an active status who is not assigned to a special branch, who has more service computed under section 3360(b) of this title, who has been recommended for promotion, and who is not assigned to a unit organized to serve as a unit.

[*See main edition for text of* (d) *to* (j)]

(As amended Pub. L. 95-485, title VIII, § 820(e)(2)-(4), Oct. 20, 1978, 92 Stat. 1627.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-485, § 820(e)(2), struck out "and to the Women's Army Corps" following "Judge Advocate General's Corps".

Subsec. (b). Pub. L. 95-485, § 820(e)(3), struck out "or the Women's Army Corps" following "special branch" and "or corps" following "same branch".

Subsec. (c). Pub. L. 95-485, § 820(e)(4), struck out "or the Women's Army Corps" following "special branch" in two places.

§ 3383. Commissioned officers: Army Reserve; promotion to grades of first lieutenant, captain, major, lieutenant colonel, and colonel to fill vacancies in units

[*See main edition for text of* (a)]

(b) In referring the names of officers for consideration for promotion under subsection (a), the convening officer shall place on a zone of consideration list the name of each officer who is assigned to a unit organized to serve as a unit, who is eligible for consideration for promotion under section 3363(b) or (g) of this title, and who is geographically available to fill the vacancy. The convening officer shall refer the list to the selection board for consideration. Without regard to section 3363(a) and (b) of this title, he may also place on such a list for promotion to the next higher reserve grade the name of any reserve first lieutenant or second lieutenant who has served creditably for at least a year in a position that is in a unit organized to serve as a unit and is prescribed to be filled by a captain, and who has not previously been promoted under this section.

[*See main edition for text of* (c) *to* (e)]

(As amended Pub. L. 95-485, title VIII, § 820(e)(5), Oct. 20, 1978, 92 Stat. 1627.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-485 struck out provision making officers of the Women's Army Corps eligible for consideration to fill a vacancy whenever the Secretary determined that a vacancy could be filled by an officer of the Women's Army Corps even though the vacancy was not allocated to that branch.

CHAPTER 345—RANK AND COMMAND

Sec.
[3580. Repealed.]

AMENDMENTS

1978—Pub. L. 95-485, title VIII, § 820(f), Oct. 20, 1978, 92 Stat. 1627, struck out item 3580, which read "Command: commissioned officers of Women's Army Corps".

[§ 3580. Repealed. Pub. L. 95-485, title VIII, § 820(f), Oct. 20, 1978, 92 Stat. 1627]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 206, provided that the Secretary of the Army prescribe the military authority that commissioned officers of the Women's Army Corps may exercise.

CHAPTER 361—SEPARATION FOR VARIOUS REASONS

Sec.
[3814a. Expired.]

[§ 3814a. Expired]

CODIFICATION

Section 3814a, act Aug. 10, 1956, ch. 1041, as added Pub. L. 93-558, § 1, Dec. 30, 1974, 88 Stat. 1793, which related to the discharge, during a reduction in force, of regular commissioned officers, second lieutenants, first lieutenants, and captains, expired three years after its effective date, December 30, 1974, in accordance with section 2 of of Pub. L. 93-558, Dec. 30, 1974, 88 Stat. 1794.

§ 3818. Regular female members: termination of appointment or enlistment

(a) The Secretary of the Army may terminate—

(1) the appointment of a female commissioned officer of the Regular Army, under regulations prescribed by the President; or

(2) the appointment of a female warrant officer, or the enlistment of a female member, of the Regular Army.

(b) The appointment of a commissioned officer may not be terminated under subsection (a)(1) by dismissal.

(c) An enlisted member whose enlistment is terminated under subsection (a)(2) shall be discharged from the Army.

(As amended Oct. 20, 1978, Pub. L. 95-485, title VIII, § 820(g), 92 Stat. 1627.)

AMENDMENTS

1978—Subsec. (a)(2). Pub. L. 95-485, § 820(g)(1), substituted "female warrant officer" for "warrant officer" and "a female member, of the Regular Army" for "an enlisted member, of the Women's Army Corps, Regular Army".

Subsec. (c). Pub. L. 95-485, § 820(g)(2), struck out "of the Women's Army Corps" following "enlisted member".

CHAPTER 363—SEPARATION OR TRANSFER TO RETIRED RESERVE

§ 3848. Twenty-eight years: reserve first lieutenants, captains, majors, and lieutenant colonels

[See main edition for text of (a) to (c)]

(d) Notwithstanding subsection (a), an officer who is assigned to the Army Nurse Corps, or the Army Medical Specialist Corps, and who would otherwise be removed from an active status under subsection (a), may, in the discretion of the Secretary of the Army, be retained in an active status, but not later than 30 days after he completes 30 years of service computed under section 3853 of this title.

(As amended Pub. L. 95-485, title VIII, § 820(h), Oct. 20, 1978, 92 Stat. 1627.)

AMENDMENTS

1978—Subsec. (d). Pub. L. 95-485 substituted "or the Army Medical Specialist Corps" for "the Army Medical Specialist Corps, or the Women's Army Corps".

§ 3855. Retention in active status of certain officers until age 60

Notwithstanding any other section of this chapter except section 3846, the Secretary of the Army may, with the officer's consent, retain in an active status any reserve officer in the Medical Corps, Dental Corps, Veterinary Corps, the Chaplains, the Army Nurse Corps, or the Army Medical Specialist Corps, but not later than the date on which he becomes 60 years of age.

(As amended Pub. L. 96-107, title IV, § 403(a), Nov. 9, 1979, 93 Stat. 808.)

AMENDMENTS

1979—Pub. L. 96-107 added reference to Veterinary Corps.

CHAPTER 365—RETIREMENT FOR AGE

§ 3883. Age 60: regular commissioned officers below major general

Unless retired or separated at an earlier date, each commissioned officer whose regular grade is below major general, other than a professor or the director of admissions of the United States Military Academy, shall be retired when he becomes 60 years of age, except as provided by section 8301 of title 5.

(As amended Oct. 30, 1978, Pub. L. 95-551, § 2, 92 Stat. 2069.)

AMENDMENTS

1978—Pub. L. 95-551 substituted "director of admissions" for "registrar".

§ 3886. Age 64: regular major generals whose retirement has been deferred; permanent professors of United States Military Academy

Unless retired or separated at an earlier date, each commissioned officer whose regular grade is major general, and whose retirement under section 3923 of this title has been deferred under clause (2) of that section, and each permanent professor and the director of admissions of the United States Military Academy, shall be retired when he becomes 64 years of age, except as provided by section 8301 of title 5.

(As amended Oct. 30, 1978, Pub. L. 95-551, § 2, 92 Stat. 2069.)

AMENDMENTS

1978—Pub. L. 95-551 substituted "director of admissions" for "registrar".

CHAPTER 367—RETIREMENT FOR LENGTH OF SERVICE

§ 3916. Twenty-eight years: promotion-list lieutenant colonels

[See main edition for text of (a)]

(b) The Secretary of the Army may defer the retirement under this section of—

(1) any promotion-list officer in the regular grade of lieutenant colonel in the Medical Corps, Dental Corps, Veterinary Corps, Medical Service Corps, or the Chaplains, but not later than the date on which he becomes 60 years of age; and

(2) any officer in the grade of lieutenant colonel in the Army Nurse Corps, or Army Medical Specialist Corps, Regular Army, until the thirtieth day after she completes 30 years of service computed under section 3927(a) of this title.

(As amended Oct. 20, 1978, Pub. L. 95–485, title VIII, § 820(i), 92 Stat. 1628.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95–485 substituted in cl. (2) "Army Nurse Corps" for "Women's Army Corps, Army Nurse Corps" and struck out cl. (3), permitting the Secretary to defer retirement of any officer while serving as Director of the Women's Army Corps.

PART III—TRAINING

CHAPTER 401—TRAINING GENERALLY

§ 4314. United States Army Command and General Staff College degree

TRANSFER OF FUNCTIONS

All functions of the Commissioner of Education, Department of Health, Education, and Welfare, were transferred to the Secretary of Education by section 3441(a)(1) of Title 20, Education.

CHAPTER 403—UNITED STATES MILITARY ACADEMY

Sec.
4331. Establishment; Superintendent; faculty.
4336. Permanent professors; director of admissions.
[4338. Repealed.]

AMENDMENTS

1978—Pub. L. 95–551, § 4(b), Oct. 30, 1978, 92 Stat. 2069, substituted "Establishment; Superintendent; faculty" for "Superintendent; faculty; adjutant; chaplain" in item 4331, "director of admissions" for "registrar" in item 4336, and struck out item 4338, which read "Director of music".

§ 4331. Establishment; Superintendent; faculty

(a) There is in the Department of the Army a United States Military Academy, at West Point, New York, in this chapter called the "Academy", for the instruction and preparation for military service of selected persons called "cadets". The organization of the Academy shall be prescribed by the Secretary of the Army.

(b) There shall be at the Academy the following:

(1) A Superintendent.

(2) A Dean of the Academic Board, who is a permanent professor.

(3) A Commandant of Cadets.

(4) Twenty-two permanent professors.

(5) A chaplain.

(6) A director of admissions.

(As amended Oct. 30, 1978, Pub. L. 95–551, § 1, 92 Stat. 2069.)

AMENDMENTS

1978—Pub. L. 95–551 substituted in section catchline "Establishment; Superintendent; faculty" for "Superintendent; faculty; adjutant; chaplain".

Subsec. (a). Pub. L. 95–551 substituted provision establishing in the Department of the Army a Military Academy located at West Point, New York, for instruction and preparation of cadets for military service and providing that the organization of the Academy be prescribed by the Secretary of the Army for provision describing the faculty of the Academy as consisting of a Superintendent, a Dean of the Academic Board, a Commandant of Cadets, two permanent professors in each of nine enumerated academic fields, one permanent professor in each of the fields of Law, Ordnance, and Physical education, a professor of Military Hygiene, an adjutant, a registrar, a chaplain, and a director of music.

Subsec. (b). Pub. L. 95–551 substituted provision describing the faculty of the Academy as consisting of a Superintendent, a Dean of the Academic Board, a Commandant of Cadets, twenty-two permanent professors, a chaplain, and a director of admissions for provision making an officer, upon becoming the senior commissioned officer of the Medical Corps on active duty at the Academy, the professor of Military Hygiene.

§ 4333. Superintendent; faculty: appointment and detail

[*See main edition for text of* (a) *and* (b)]

(c) The director of admissions of the Academy shall be appointed by the President, by and with the advice and consent of the Senate, and shall perform such duties as the Superintendent of the Academy may prescribe with the approval of the Secretary of the Army.

(d) Any officer of the Regular Army in a regular or temporary grade above captain may be detailed to perform the duties of director of admissions without being appointed as director of admissions. Such a detail does not affect his position on the applicable promotion list.

[*See main edition for text of* (e)]

(As amended Oct. 30, 1978, Pub. L. 95–551, § 2, 92 Stat. 2069.)

AMENDMENTS

1978—Subsec. (c). Pub. L. 95–551 substituted "director of admissions" for "registrar".

Subsec. (d). Pub. L. 95–551 substituted "director of admissions" for "registrar" wherever appearing.

§ 4334. Command and supervision

[*See main edition for text of* (a) *to* (c)]

(d) The permanent professors and the director of admissions exercise command only in the academic department of the Academy.

(As amended Oct. 30, 1978, Pub. L. 95–551, § 2, 92 Stat. 2069.)

AMENDMENTS

1978—Subsec. (d). Pub. L. 95–551 substituted "director of admissions" for "registrar".

§ 4336. Permanent professors; director of admissions

[*See main edition for text of* (a)]

(b) A person appointed as director of admissions of the Academy has the regular grade of

lieutenant colonel, and, after he has served six years as director of admissions, has the regular grade of colonel. However, a person appointed from the Regular Army has the regular grade of colonel after the date when he completes six years of service as director of admissions, or after the date when a promotion-list officer, junior to him on the promotion list on which his name was carried before his appointment as director of admissions, is promoted to the regular grade of colonel, whichever is earlier.

(c) Unless he is serving in a higher grade, an officer detailed to perform the duties of director of admissions has, while performing those duties, the temporary grade of lieutenant colonel and, after performing those duties for a period of six years, has the temporary grade of colonel.

(As amended Oct. 30, 1978, Pub. L. 95-551, §§ 2, 4(a), 92 Stat. 2069.)

AMENDMENTS

1978—Pub. L. 95-551, § 4(a), substituted in section catchline "director of admissions" for "registrar".

Subsec. (b). Pub. L. 95-551, § 2, substituted "director of admissions" for "registrar" wherever appearing.

Subsec. (c). Pub. L. 95-551, § 2, substituted "director of admissions" for "registrar".

[§ 4338. Repealed. Pub. L. 95-551, § 3(a), Oct. 30, 1978, 92 Stat. 2069]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 239; Sept. 7, 1962, Pub. L. 87-649, § 4, 76 Stat. 493, provided that the director of music, who was also leader of the Military Academy Band, have the rank prescribed by the Secretary of the Army, that at such time as the President direct, the director of music be retired in the grade equal to the highest rank in which he served on active duty satisfactorily for at least six months and with the retired pay of an officer of the Army with the same grade and length of service, and that the dependents of the director of music be entitled to pensions, death gratuity, and other benefits provided for the dependents of a Regular Army officer with corresponding grade and length of service.

PART IV—SERVICE, SUPPLY, AND PROCUREMENT

CHAPTER 433—PROCUREMENT

§ 4540. Architectural and engineering services

[*See main edition for text of* (a) *and* (b)]

(c) Sections 305, 3324, 5101-5115, 5331-5338, 5341, 5342, and 7204 of title 5 and subchapter VI of chapter 53 of such title 5 do not apply to employment under this section.

(As amended Oct. 13, 1978, Pub. L. 95-454, title VII, § 703(c)(3), title VIII, § 801(a)(3)(I), 92 Stat. 1217, 1222.)

REFERENCES IN TEXT

Section 5337 of title 5, included within the reference to sections 5331 to 5338 of title 5 in subsec. (c), was repealed by Pub. L. 95-454, title VIII, § 801(a)(2), Oct. 13, 1978, 92 Stat. 1221.

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-454 added reference to subchapter VI of chapter 53 of title 5, and substituted "7204" for "7154".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 703(c)(3) of Pub. L. 95-454 substituting reference to section 7204 of title 5 for reference to section 7154 of title 5 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of Title 5, Government Organization and Employees.

Amendment by section 801(a)(3)(I) of Pub. L. 95-454 adding reference to subchapter VI of chapter 53 of title 5 effective on the first day of the first applicable pay period beginning on or after the 90th day after Oct. 13, 1978, see section 801(a)(4) of Pub. L. 95-454, set out as an Effective Date note under section 5361 of Title 5.

CHAPTER 437—UTILITIES AND SERVICES

§ 4593. Quarters: heat and light

CHARGES FOR EXCESS ENERGY CONSUMPTION; DEPOSIT OF PROCEEDS; APPLICABILITY; IMPLEMENTATION

Pub. L. 95-82, title V, § 507, Aug. 1, 1977, 91 Stat. 372, provided that:

"(a) In order to accomplish energy conservation, the Secretary of Defense shall, under such regulations as he may prescribe—

"(1) establish a reasonable ceiling for the consumption of energy in any military family housing facility equipped with an appropriate energy consumption metering device; and

"(2) assess the member of the Armed Forces who is the occupant of such facility a charge, at rates to be determined by the Secretary of Defense, for any energy consumption metered at such facility in excess of the ceiling established for such facility pursuant to paragraph (1).

"(b) Any proceeds from excess consumption charges under subsection (a) shall be deposited in the Department of Defense family housing management account established by section 501(a) of the Act entitled 'An Act to authorize certain construction at military installations, and for other purposes', approved July 27, 1962 (42 U.S.C. 1594a-1(a)).

"(c) This section shall apply with respect to any military family housing facility in any State, the District of Columbia, the Commonwealth of Puerto Rico, or Guam.

"(d) The provisions of subsection (a)(2) shall not be implemented until—

"(1) the Secretary of Defense conducts a test program to determine the feasibility of assessing occupants of military family housing charges for excess energy consumption;

"(2) the Secretary of Defense provides the written results of such test program, together with proposed regulations implementing this section, to the Committees on Armed Services and Appropriations of the Senate and the House of Representatives; and

"(3) a period of 90 days expires following the date on which the results referred to in clause (2) have been submitted to such committees."

CHAPTER 439—SALE OF SERVICEABLE MATERIAL

§ 4621. Quartermaster supplies: members of armed forces; veterans; executive or military departments and employees; prices

[*See main edition for text of* (a) *to* (e)]

(f) Under such conditions as the Secretary may prescribe, exterior articles of uniform may be sold to a person who has been discharged from the Army honorably or under honorable conditions, at the prices at which like articles are sold to members of the Army. This subsec-

tion does not modify section 772, 773, or 3612 of this title.

[See main edition for text of (g) to (i) and credits]

CODIFICATION

Subsec. (f) is set out in this supplement to correct typographical error appearing in the main edition.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4629 of this title; title 37 section 1007.

CHAPTER 449—REAL PROPERTY

§ 4774. Construction: limitations

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2388 of this title; title 29 section 828; title 42 sections 1592d, 1594h, 2942, 5042; title 48 section 1409b; title 50 section 491.

Subtitle C—Navy and Marine Corps

PART I—ORGANIZATION

Chap.
[516. Repealed.]

AMENDMENTS

1977—Pub. L. 95–82, title VI, § 611(b), Aug. 1, 1977, 91 Stat. 378, struck out item 516 "Naval Districts".

PART I—ORGANIZATION

Chap.
[516. Repealed.]

AMENDMENTS

1977—Pub. L. 95–82, title VI, § 611(b), Aug. 1, 1977, 91 Stat. 378, struck out item 516 "Naval Districts".

CHAPTER 505—SECRETARY, UNDER SECRETARY, AND ASSISTANT SECRETARIES OF THE NAVY

§ 5034. Assistant Secretaries of the Navy: appointment; duties

(a) There are three Assistant Secretaries of the Navy in the Department of the Navy. They shall be appointed from civilian life by the President, by and with the advice and consent of the Senate.

[See main edition for text of (b)]

(As amended Nov. 9, 1979, Pub. L. 96–107, title VIII, § 820(c), 93 Stat. 819.)

AMENDMENTS

1979—Subsec. (a). Pub. L. 96–107 substituted "three" for "four".

CHAPTER 509—OFFICE OF THE CHIEF OF NAVAL OPERATIONS

§ 5081. Chief of Naval Operations: appointment; term of office; powers; duties

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5231 of this title.

§ 5088. Naval Inspector General: detail; duties

CROSS REFERENCES

Inspector General Act of 1978, see Appendix to Title 5, Government Organization and Employees.

CHAPTER 516—NAVAL DISTRICTS

[§§ 5221, 5222. Repealed. Pub. L. 95–82, title VI, § 611(a), Aug. 1, 1977, 91 Stat. 378]

Section 5221, added Pub. L. 90–110, title X, § 1001(1), Oct. 21, 1967, 81 Stat. 310, provided for the inclusion of naval districts within the organization of the Department of the Navy.

Section 5222, added Pub. L. 90–110, title X, § 1001(1), Oct. 21, 1967, 81 Stat. 310, provided for the detailing of officers of the Navy not below the grade of rear admiral as commandants of each of the naval districts.

CHAPTER 517—FLEET COMMANDS AND OTHER HIGH POSITIONS

§ 5231. Navy positions: admirals and vice admirals

[See main edition for text of (a)]

(b) The number of officers serving in the grades of admiral and vice admiral under subsection (a) of this section and section 5081 of this title may not be more than 15 percent of the number of officers on active duty above the grade of captain. Of the number of officers that may serve in the grades of admiral and vice admiral, as determined under this subsection, not more than 25 percent may serve in the grade of admiral.

(c) An officer while serving as Chairman of the Joint Chiefs of Staff, if serving in the grade of admiral, is in addition to the number authorized for that grade under subsection (b) of this section.

(d) An officer of the Navy assigned as Chief of Staff to the President shall be appointed by the President, by and with the advice and consent of the Senate, to the grade of admiral, unless he is otherwise entitled to the same or a higher grade. Such an appointment is effective while the officer is so serving, and while in that grade he is in addition to the number authorized for that grade under subsection (b) of this section.

(e) An appointment under this section does not create a vacancy in the grade held by the officer at the time he is appointed and does not increase the authorized strength of the Navy in officers on the active list.

(As amended July 30, 1977, Pub. L. 95–79, title VIII, § 811(b)(1), (2), 91 Stat. 336; Oct. 20, 1978, Pub. L. 95–485, title VIII, § 818(a), 92 Stat. 1626.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95–485 substituted "active duty" for "the active list of the Navy".

1977—Subsec. (b). Pub. L. 95–79, § 811(b)(1), substituted provisions authorizing the number of officers under subsec. (a) of this section and section 5081 of this title to be not more than 15 percent of the number of officers on the active list above the grade of captain, for provisions authorizing the number of officers under subsec. (a) of this section to be not more than 15 percent of the number of officers prescribed for rear admiral under section 5442 of this title or, if not operative, section 5447 of this title, and substituted "25 percent may serve in" for "eight may have".

Subsec. (c). Pub. L. 95-79, § 811(b)(2), redesignated former subsec. (d) as (c) and, as so redesignated, struck out reference to former subsec. (c) of this section. Former subsec. (c), relating to the number of officers to serve in the grades of admiral and vice admiral, except in time of war or national emergency, was struck out.

Subsec. (d). Pub. L. 95-79, § 811(b)(2)(B), (C), redesignated former subsec. (e) as (d) and, as so redesignated, struck out reference to former subsec. (c) of this section. Former subsec. (d) redesignated (c).

Subsecs. (e), (f). Pub. L. 95-79, § 811(b)(2)(B), redesignated former subsecs. (e) and (f) as (d) and (e), respectively.

§ 5232. Marine Corps positions: general and lieutenant generals

[See main edition for text of (a)]

(b) The number of officers serving in the grades of general and lieutenant general may not be more than 15 percent of the number of officers on active duty above the grade of colonel.

(c) An officer of the Marine Corps assigned as Chief of Staff to the President shall be appointed by the President, by and with the advice and consent of the Senate, to the grade of general. Such an appointment is effective while the officer is so serving, and while in that grade he is in addition to the number authorized for that grade under subsection (b) of this section.

[See main edition for text of (d)]

(As amended July 30, 1977, Pub. L. 95-79, title VIII, § 811(b) (3), (4), 91 Stat. 336; Oct. 20, 1978, Pub. L. 95-485, title VIII, § 818(b), 92 Stat. 1626.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-485 substituted "active duty" for "the active list of the Marine Corps".

1977—Subsec. (b). Pub. L. 95-79, § 811(b)(3), substituted provisions setting forth criteria for determination of number of officers authorized to be serving in the grades of general and lieutenant general, for provisions setting forth criteria for determination of number of officers authorized to be serving in the grade of lieutenant general.

Subsec. (c). Pub. L. 95-79, § 811(b)(4), added provision authorizing the appointed officer to be in addition to the number allowed under subsec. (b) of this section.

PART II—PERSONNEL

CHAPTER 533—DISTRIBUTION IN GRADE

§ 5442. Navy: line officers on active duty

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5445, 5446, 5451, 5457, 5778 of this title.

§ 5443. Marine Corps: officers on active duty

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5445, 5446, 5451, 5458, 5778 of this title.

§ 5447. Navy: line officers on active list; permanent grade

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5455, 5780 of this title.

§ 5448. Marine Corps: officers on active list; permanent grade

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5455, 5780 of this title.

§ 5457. Naval Reserve: officers in an active status in permanent grades above chief warrant officer, W-4 [1]

(a) The authorized strength of the Naval Reserve in officers in an active status in the grade of rear admiral, exclusive of those counted under secion 5442 of this title, is 48, distributed among the line and the staff corps as follows:

[See main edition for text of (1) to (7); (b) to (d)]

(As amended Pub. L. 96-107, title III, § 302(b), Nov. 9, 1979, 93 Stat. 806.)

AMENDMENTS

1979—Subsec. (a). Pub. L. 96-107 added provisions relating to exception for those counted under section 5442 of this title.

§ 5458. Marine Corps Reserve: officers in an active status in permanent grades above chief warrant officer, W-4 [2]

(a) The authorized strength of the Marine Corps Reserve in officers in an active status in the grades of brigadier general and major general combined, exclusive of those counted under section 5443 of this title, is 10.

[See main edition for text of (b) to (d)]

(As amended Pub. L. 96-107, title III, § 302(c), Nov. 9, 1979, 93 Stat. 806.)

AMENDMENTS

1979—Subsec. (a). Pub. L. 96-107 added provisions relating to exception for those counted under section 5443 of this title.

CHAPTER 535—GRADE AND RANK OF OFFICERS

§ 5504. Lineal lists: maintenance

[See main edition for text of (a) to (c)]

(d) For the purpose of this section, each officer serving in a grade to which he was appointed under section 5597 or promoted under section 5787 or 5787d of this title is considered as serving in the grade he would hold if he had not been so appointed or promoted.

[See main edition for text of (e) to (k)]

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[1] Section amended by Pub. L. 96-559 which eliminated "permanent" preceding "grade" and "grades" in text of subsecs. (a) and (b) without amending catchline to reflect such change.

[2] Section amended by Pub. L. 96-559 which eliminated "permanent" preceding "grades" in text of subsecs. (a) and (b) without amending catchline to reflect such change.

(As amended Sept. 19, 1978, Pub. L. 95-377, § 5, 92 Stat. 721.)

AMENDMENTS

1978—Subsec. (d). Pub. L. 95-377 added "or 5787d" following "5787".

CHAPTER 543—SELECTION BOARDS

§ 5703. Marine Corps; officers: promotion and continuation on the active list

(a) At least once each year the Secretary of the Navy shall convene the following selection boards to recommend male officers of the Marine Corps for promotion and for continuation on the active list:

(1) A board to recommend brigadier generals for promotion to the grade of major general, consisting of nine officers serving in the grade of major general or above.

[*See main edition for text of (2) to (4); (b) to (e)*]

(As amended Sept. 19, 1978, Pub. L. 95-377, § 10(a), 92 Stat. 721.)

AMENDMENTS

1978—Subsec. (a)(1). Pub. L. 95-377 substituted "serving in the grade of" for "holding permanent appointments in the grade of".

EFFECTIVE AND TERMINATION DATES OF 1978 AMENDMENT

Section 10(b) of Pub. L. 95-377 provided that: "The amendment made by subsection (a) [amending subsec. (a)(1) of this section] shall be effective only for the period beginning on September 15, 1978, and ending on September 30, 1979."

§ 5707. Officers to be recommended for promotion or continuation

SUSPENSION OF APPLICATION OF PROMOTION, ETC., PROVISIONS BEGINNING SEPTEMBER 15, 1978 AND ENDING SEPTEMBER 30, 1979; AUTHORITY OF PRESIDENT

Pub. L. 95-377, § 2, Sept. 19, 1978, 92 Stat. 719, provided that:

"(a) For the period beginning on September 15, 1978, and ending on September 30, 1979, the President is authorized to suspend application of the following provisions of title 10, United States Code:

"(1) Section 5707(c).

"(2) Section 5751 (a), (b), and (e).

"(3) Section 5770.

"(b) No suspension invoked by the President under authority of subsection (a) shall be effective after September 30, 1979."

EXECUTIVE ORDER NO. 11554

Ex. Ord. No. 11554, Aug. 29, 1970, 35 F.R. 14189, as amended by Ex. Ord. No. 11684, Aug. 30, 1972, 37 F.R. 17959; Ex. Ord. No. 11799, Aug. 17, 1974, 39 F.R. 30101; Ex. Ord. No. 11925, June 29, 1976, 41 F.R. 26849, set out as a note under this section in the main Edition, which related to the suspension of certain provisions relating to the establishment of a maximum percentage of Navy and Marine Corps officers recommended for promotion, was revoked by Ex. Ord. No. 12082, Sept. 19, 1978, 43 F.R. 42727, set out as a note below.

EX. ORD. NO. 12082. SUSPENSION OF CERTAIN PROMOTION AND DISABILITY SEPARATION LIMITATIONS

Ex. Ord. No. 12082, Sept. 19, 1978, 43 F.R. 42727, provided:

By the authority vested in me as President of the United States of America by Sections 2 and 3 of an Act approved by me today (bill S. 3454 enacted by the Senate and the House of Representatives on September 7 and 12, 1978) [Pub. L. 95-377, Sept. 19, 1978, 92 Stat. 719], and having determined that certain promotion limitations applicable to the Navy and Marine Corps should continue to be suspended, and having determined that the new statutory conditions authorizing a continuation of certain existing disability separation practices in the Armed Forces should be effective, it is hereby ordered as follows:

1-101. For the period beginning on September 15, 1978 and ending on September 30, 1979, the application of the following provisions of Title 10 of the United States Code is suspended:

(a) Section 5707(c), restricting the number of Navy and Marine Corps officers who may be recommended for promotion from below the appropriate promotion zone.

(b) Section 5751(a), requiring Marine Corps officers serving in the grade of brigadier general to have completed three years' service in grade to be eligible for consideration for promotion to major general.

(c) Section 5751(b), requiring certain officers to have completed specific years of service in grade before being eligible for consideration for promotion to the next higher grade.

(d) Section 5751(e), precluding officers designated for limited duty who are below the appropriate promotion zone from being considered for promotion.

(e) Section 5770, requiring certain officers to have had at least two years' sea or foreign service in grade before they may be promoted.

1-102. For the period beginning on September 15, 1978 and ending on September 30, 1979, the conditions provided for by the following provisions of Title 10 of the United States Code are effective:

(a) Section 1201(3)(B)(iv), authorizing the retirement for certain disabilities of at least 30 percent which were incurred in line of duty.

(b) Section 1203(4)(A)(iii), authorizing separation for certain disabilities of less than 30 percent which were incurred in line of duty.

(c) Section 1203(4)(C)(iii), authorizing separation for certain disabilities of at least 30 percent which were not incurred in line of duty.

1-103. Executive Order Nos. 10616, 11151, 11437, and 11554, as amended, are hereby revoked.

JIMMY CARTER.

CHAPTER 545—PROMOTIONS

Sec.
5787c. Navy and Marine Corps; warrant officers and officers designated for limited duty: temporary promotion.
5787d. Navy lieutenants: temporary promotion.

AMENDMENTS

1978—Pub. L. 95-377, §§ 4(b), 11(b), Sept. 19, 1978, 92 Stat. 721, 722, substituted "Navy and Marine Corps; warrant officers and officers designated for limited duty: temporary promotion" for "Navy and Marine Corps, warrant officers: temporary promotion" in item 5787c and added item 5787d.

§ 5751. Navy, male line officers; Marine Corps, male officers: eligibility for consideration by selection board

SUSPENSION OF APPLICATION OF PROMOTION, ETC., PROVISIONS BEGINNING SEPTEMBER 15, 1978 AND ENDING SEPTEMBER 30, 1979; AUTHORITY OF PRESIDENT

For authority of the President to suspend the provisions of subsecs. (a), (b), and (e) of this section for the period beginning Sept. 15, 1978, and ending Sept. 30, 1979, see Pub. L. 95-377, § 2, Sept. 19, 1978, 92 Stat. 719, set out as a note under section 5707 of this title.

SUSPENSION OF SUBSECS. (a), (b), AND (e) OF THIS SECTION BETWEEN SEPTEMBER 15, 1978 AND SEPTEMBER 30, 1979

For suspension of subsecs. (a), (b), and (e) of this section, which relate to certain promotion limitations, for the period beginning on Sept. 15, 1978 and ending Sept. 30, 1979, see Ex. Ord. No. 12082, Sept. 19, 1978, § 1-101(b), (c), (d), 43 F.R. 42727, set out as a note under section 5707 of this title.

EXECUTIVE ORDER NO. 10616

Ex. Ord. No. 10616, June 22, 1955, 20 F.R. 4435, set out as a note under this section in the main edition, which related to the suspension of certain provisions relating to Marine Corps officers, was revoked by Ex. Ord. No. 12082, Sept. 19, 1978, 43 F.R. 42727, set out as a note under section 5707 of this title.

EXECUTIVE ORDER NO. 11437

Ex. Ord. No. 11437, Dec. 2, 1968, 33 F.R. 17945, set out as a note under this section in the main edition, which related to the suspension of service-in-grade requirements for officers of the Navy and Marine Corps, was revoked by Ex. Ord. No. 12082, Sept. 19, 1978, 43 F.R. 42727, set out as a note under section 5707 of this title.

§ 5770. Regular Navy; male line officers not restricted to the performance of duty or designated for limited duty: sea or foreign service required

SUSPENSION OF APPLICATION OF PROMOTION, ETC., PROVISIONS BEGINNING SEPTEMBER 15, 1978 AND ENDING SEPTEMBER 30, 1979; AUTHORITY OF PRESIDENT

For authority of the President to suspend the provisions of this section, for period beginning Sept. 15, 1978 and ending Sept. 30, 1979, see Pub. L. 95-377, § 2, Sept. 19, 1978, 92 Stat. 719, set out as a note under section 5707 of this title.

SUSPENSION OF THIS SECTION BETWEEN SEPTEMBER 15, 1978 AND SEPTEMBER 30, 1979

For suspension of this section for the period beginning on Sept. 15, 1978 and ending Sept. 30, 1979, see Ex. Ord. No. 12082, Sept. 19, 1978, 43 F.R. 42727, set out as a note under section 5707 of this title.

EXECUTIVE ORDER NO. 11151

Ex. Ord. No. 11151, Apr. 8, 1964, 29 F.R. 4989, set out as a note under this section in the main Edition, which related to the suspension of provisions requiring sea or foreign service for promotion, was revoked by Ex. Ord. No. 12082, Sept. 19, 1978, 43 F.R. 42727, set out as a note under section 5707 of this title.

§ 5786. Application: preceding sections

[See main edition for text of (a) and (b)]

(c) For the purpose of the preceding sections of this chapter, an officer serving in a grade to which he was appointed for a period of limited duration or in a grade to which he was temporarily promoted under section 5787 or 5787d of this title is considered as serving in the grade he would hold if he had not received any such appointment or promotion.

(As amended Sept. 19, 1978, Pub. L. 95-377, § 6(a), 92 Stat. 721.)

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-377 added "or 5787d" following "5787".

§ 5787c. Navy and Marine Corps; warrant officers and officers designated for limited duty: temporary promotion

(a) Warrant officers may be temporarily promoted to higher warrant officer grades under such regulations as the Secretary of the Navy may prescribe.

(b)(1) Officers designated for limited duty may be temporarily promoted to a higher grade under such regulations as the Secretary may prescribe.

(2) No promotion may be made under this subsection after September 30, 1979.

(As amended Pub. L. 95-377, § 11(a), Sept. 19, 1978, 92 Stat. 721.)

AMENDMENTS

1978—Pub. L. 95-377 substituted "Navy and Marine Corps; warrant officers and officers designated for limited duty: temporary promotion" for "Navy and Marine Corps, warrant officers: temporary promotion" in section catchline.

Subsec. (a). Pub. L. 95-377 designated existing provisions as subsec. (a).

Subsec. (b). Pub. L. 95-377 added subsec. (b).

§ 5787d. Navy lieutenants: temporary promotion

(a) Line officers not restricted in the performance of duty in the grade of lieutenant, possessing skills in a critical shortage and serving in lieutenant commander billets requiring such skills, may be temporarily promoted to lieutenant commander under such regulations as the Secretary of the Navy may prescribe. Temporary appointment under this section shall be made by the President alone.

(b) Temporary appointments under this section do not change the permanent, probationary, or acting status of members so appointed, prejudice them in regard to other promotions or appointments, or abridge their rights or benefits.

(c) Temporary promotions under this section may be made only upon the recommendation of a board of officers convened for that purpose. In addition to recommending officers for promotion, a board so convened shall make the report required by section 6384 of this title.

(d) Each temporary appointment under this section, unless expressly declined, is, without formal acceptance, regarded as accepted on the date made, and the member so appointed is entitled to the pay and allowances of the grade to which promoted from that date.

(e) Temporary appointments under this section will terminate upon an officer's detachment from a qualifying billet so designated by the Secretary of the Navy. When an officer, whose name is on a promotion list as a result of selection to lieutenant commander other than under this section, is detached, an appointment will be issued to include the interim period between the subject officer's detachment from the qualifying billet and the date of promotion as a result of selection board action.

(f) When his temporary appointment under this section is terminated or expires, each member of the naval service on active duty shall have the grade he would hold if he had not received any such appointment.

(g) No appointments may be made under this section after September 30, 1979.

(Added Pub. L. 95-377, § 4(a), Sept. 19, 1978, 92 Stat. 720.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5504, 5786, 5791, 6325, 6384, 6385 of this title; title 37 section 905.

§ 5791. Appointing power

(a) Except as provided in section 5787 and 5787d of this title, permanent and temporary appointments under this chapter in the Regular Navy and in the Regular Marine Corps shall be made by the President, by and with the advice and consent of the Senate.

[See main edition for text of (b)]

(As amended Sept. 19, 1978, Pub. L. 95-377, § 6(b), 92 Stat. 721.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-377 added "and 5787d" after "5787".

CHAPTER 555—ADMINISTRATION

§ 6015. Women members: duty; qualifications; restrictions

The Secretary of the Navy may prescribe the manner in which women officers appointed under section 5590 of this title, women warrant officers, and enlisted women members of the Regular Navy and the Regular Marine Corps shall be trained and qualified for military duty. The Secretary may prescribe the kind of military duty to which such women members may be assigned and the military authority which they may exercise. However, women may not be assigned to duty on vessels or in aircraft that are engaged in combat missions nor may they be assigned to other than temporary duty on vessels of the Navy except hospital ships, transports, and vessels of a similar classification not expected to be assigned combat missions.

(As amended Oct. 20, 1978, Pub. L. 95-485, title VIII, § 808, 92 Stat. 1623.)

AMENDMENTS

1978—Pub. L. 95-485 substituted provision prohibiting assignment of women to duty on vessels or in aircraft engaged in combat missions or assignment, other than to temporary duty, on naval vessels except hospital ships, transports, and vessels of similar classification not expected to be assigned combat missions for provision prohibiting assignment of women to duty in aircraft engaged in combat missions or duty on naval vessels other than hospital ships or transports.

CHAPTER 571—VOLUNTARY RETIREMENT

§ 6325. Officers: retired grade and pay

[See main edition for text of (a)]

(b) Each officer who is retired while serving in the grade of admiral, vice admiral, general, or lieutenant general by virtue of an appointment under section 5231 or 5232 of this title or who is retired while serving in a grade to which he was appointed under section 5597 of this title or promoted under section 5787 or 5787d of this title—

[See main edition for text of (1) and (2); (c)]

(As amended Sept. 19, 1978, Pub. L. 95-377, § 7, 92 Stat. 721.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-377 added "or 5787d" after "5787".

CHAPTER 573—INVOLUNTARY RETIREMENT, SEPARATION, AND FURLOUGH

Sec.
6385. Officers appointed under sections 5231, 5232, 5787, or 5787d of this title: grade for purpose of preceding sections.

AMENDMENTS

1978—Pub. L. 95-377, § 8(d), Sept. 19, 1978, 92 Stat. 721, inserted reference to section 5787d in item 6385.

§ 6384. Regular Navy and Regular Marine Corps; officers having less than 20 years of service: discharge for unsatisfactory performance of duty; severance pay; reversion of limited duty officers to prior status

(a) Each selection board convened under chapter 543 and each board of officers convened under section 5787d of this title to recommend officers for promotion shall report, from among those officers eligible for consideration, the name of each officer with less than 20 years of service whose record, in the opinion of the board, indicates his unsatisfactory performance of duty in his present grade, and, in the opinion of the board, indicates that he would not satisfactorily perform the duties of a higher grade.

[See main edition for text of (b) to (e)]

(As amended Sept. 19, 1978, Pub. L. 95-377, § 8(a), 92 Stat. 721.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-377 added "and each board of officers convened under section 5787d" following "under chapter 543".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5708, 5787d of this title.

§ 6385. Officers appointed under sections 5231, 5232, 5787, or 5787d of this title: grade for purpose of preceding sections

For the purpose of the preceding sections of this chapter, an officer serving in a grade in which he was appointed under section 5231, 5232, 5787, or 5787d of this title is considered as serving in the grade he would hold if he had not been so appointed.

(As amended Sept. 19, 1978, Pub. L. 95-377, § 8(b), (c), 92 Stat. 721.)

AMENDMENTS

1978—Pub. L. 95-377 inserted reference to section 5787d in section catchline and text.

§ 6386. Suspension: preceding sections

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 50 section 1651.

CHAPTER 575—RECALL TO ACTIVE DUTY

§ 6485. Members of the Fleet Reserve and Fleet Marine Corps Reserve: authority to recall

[*See main edition for text of* (a)]

(b) In time of peace any member of the Fleet Reserve or the Fleet Marine Corps Reserve may be required to perform not more than two months' active duty for training in each four-year period.

(As amended July 30, 1977, Pub. L. 95-79, title VIII, § 805, 91 Stat. 333.)

AMENDMENTS

1977—Subsec. (b). Pub. L. 95-79 struck out requirements relating to physical examinations for members of the Fleet Reserve and Fleet Marine Corps Reserve.

PART IV—GENERAL ADMINISTRATION

CHAPTER 607—RETIREMENT OF CIVILIAN MEMBERS OF THE TEACHING STAFFS OF THE UNITED STATES NAVAL ACADEMY AND UNITED STATES NAVAL POSTGRADUATE SCHOOL

§ 7087. Election of annuity for self and beneficiary

TRANSFER OF FUNCTIONS

All functions vested by statute in the United States Civil Service Commission were transferred to the Director of the Office of Personnel Management (except as otherwise specified) by Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3784, set out under section 1101 of Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

CHAPTER 631—SECRETARY OF THE NAVY: MISCELLANEOUS POWERS AND DUTIES

§ 7204. Schools near naval activities: financial aid; transportation of dependents

(a) The Secretary of the Navy may—

(1) contribute, out of funds specifically appropriated for the purpose, to the support of schools in any locality where a naval activity is located if he finds that the schools available in the locality are inadequate for the welfare of the dependents of—

(A) members of the naval service;

(B) civilian officers and employees of the Department of the Navy;

(C) members of the Coast Guard when it is operating as a service in the Navy; and

(D) members of the Environmental Science Services Administration serving with the Navy;

who are stationed at the activity; and

(2) provide for the transportation of these dependents between the schools and the activity when the schools are not accessible by regular means of transportation.

[*See main edition for text of* (b) *and credits*]

CODIFICATION

Subsec. (a) is set out in this supplement to correct typographical error appearing in the main edition.

§ 7212. Employment of outside architects and engineers

(a) Whenever the Secretary of the Navy believes that the existing facilities of the Department of the Navy are inadequate and he considers it advantageous to national defense, he may employ, by contract or otherwise, without advertising and without reference to sections 305, 3324, 5101-5115, 5331-5338, 5341, 5342, and 7204 of title 5 and subchapter VI of chapter 53 of such title 5, architectural or engineering corporations, or firms, or individual architects or engineers, to produce designs, plans, drawings, and specifications for the accomplishment of any naval public works or utilities project or for the construction of any vessel or aircraft, or part thereof.

[*See main edition for text of* (b)]

(As amended Oct. 13, 1978, Pub. L. 95-454, title VII, § 703(c)(3), title VIII, § 801(a)(3)(I), 92 Stat. 1217, 1222.)

REFERENCES IN TEXT

Section 5337 of title 5, included within the reference to sections 5331 to 5338 of title 5 in subsec. (a), was repealed by Pub. L. 95-454, title VIII, § 801(a)(2), Oct. 13, 1978, 92 Stat. 1221.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-454 added reference to subchapter VI of chapter 53 of title 5, and substituted "7204" for "7154".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 703(c)(3) of Pub. L. 95-454 substituting reference to section 7204 of title 5 for reference to section 7154 of title 5 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of Title 5, Government Organization and Employees.

Amendment by section 801(a)(3)(I) of Pub. L. 95-454 adding reference to subchapter VI of chapter 53 of title 5 effective on the first day of the first applicable pay period beginning on or after the 90th day after Oct. 13, 1978, see section 801(a)(4) of Pub. L. 95-454, set out as an Effective Date note under section 5361 of Title 5.

CHAPTER 633—NAVAL VESSELS

§ 7291. Classification

CONSTRUCTION OF ADVANCED, VERSATILE, SURVIVABLE, AND COST-EFFECTIVE COMBATANT SHIPS; PLANS AND PROGRAMS; PRESIDENTIAL CONCLUSIONS AND RECOMMENDATIONS TO ACCOMPANY SHIP AUTHORIZATION REQUESTS

Pub. L. 95-485, title VIII, § 810(a), (b), Oct. 20, 1978, 92 Stat. 1623, provided that:

"(a) It is the policy of the United States to modernize the combatant forces of the United States Navy through the construction of advanced, versatile, survivable, and cost-effective combatant ships in sufficient numbers and having sufficient combat effectiveness to defend the United States against enemy attack and to carry out such other missions as may be assigned to the Navy by law. In order to achieve such policy, the Navy should develop plans and programs for the construction and deployment of weapon systems, including naval aviation platforms, that are more survivable, less costly, and more effective than those presently in the Navy.

"(b) In order that the Congress may be kept currently informed regarding compliance with the policy ex-

pressed in subsection (a), the President shall include in all requests made to the Congress for the authorization of any ship for the combatant forces, including any aircraft carrier, (1) his conclusions with respect to the survivability, cost effectiveness, and combat effectiveness of such ship, (2) a recommendation whether such ship should be nuclear or conventionally powered, and (3) the reasons for such conclusions and recommendations."

NUCLEAR POWERED MAJOR COMBATANT VESSELS; CONSTRUCTION; DEFINITION; REPORT TO CONGRESS BY SECRETARY OF DEFENSE; LIMITATIONS ON AUTHORIZATION OR APPROPRIATION REQUESTS; REPORT TO CONGRESS BY PRESIDENT OF ALTERNATE PROGRAM

Pub. L. 93-365, title VIII, §§ 801-804, Aug. 5, 1974, 88 Stat. 408, 409, which authorized construction of nuclear powered major combatant vessels for the strike forces of the United States Navy and an adequate industrial base for research, design, maintenance, etc., of these vessels, defined the term "major combatant vessels for the strike forces of the United States Navy", required the Secretary of Defense to report to Congress each calendar year on the application of nuclear propulsion to these vessels, and provided all requests for authorizations or appropriations for these vessels be for the construction of nuclear powered vessels unless the President advises Congress that such construction would not be in the national interest and includes for consideration by Congress an alternate program of nuclear powered ships, was repealed by Pub. L. 95-485, title VIII, § 810(c), Oct. 20, 1978, 92 Stat. 1623.

CONVERSION, OVERHAUL, OR REPAIR WORK UNDER SERVICE LIFE EXTENSION PROGRAM OR DDG-2 DESTROYER MODERNIZATION PROGRAM; USE OF PUBLIC OR PRIVATE SHIPYARDS; ADDITIONAL PERSONNEL; LEAST-COST APPROACH STUDY; REPORT TO CONGRESS; ADVANCED PLANNING OR PURCHASING LONG LEAD ITEMS

Pub. L. 95-485, title VIII, § 811, Oct. 20, 1978, 92 Stat. 1624, provided that:

"(a) Notwithstanding any other provision of law and except as provided in subsection (b), the Secretary of the Navy may not take any action with respect to the use of either public shipyards or private shipyards for conversion, overhaul, or repair work under the Service Life Extension Program (SLEP) or under the program for the modernization of DDG-2 class guided missile destroyers, or for the employment of additional personnel for, or the transfer of additional personnel to, any public shipyard as a part of the necessary buildup of manpower for carrying out either such program, until—

"(1) the Secretary of the Navy conducts a comprehensive least-cost approach study (A) comparing the costs of carrying out such programs at public shipyards with the costs of carrying out such programs at private shipyards, and (B) evaluating such other factors as the Secretary of the Navy considers should be taken into account in assigning work in connection with the conversion, overhaul, repair, or modernization of vessels to public or private shipyards;

"(2) a written report containing the results of such study is submitted, after the date of the enactment of this Act [Oct. 20, 1978], to the Committees on Armed Services and on Appropriations of the Senate and the House of Representatives; and

"(3) a period of sixty days of continuous session of Congress expires following the date on which such report is submitted to such committees.

"(b) Nothing in this section shall prevent the Navy from conducting advanced planning or purchasing long lead items in connection with either program described in subsection (a) so long as such planning or purchasing is not related to the performance of work in connection with either such program at any particular shipyard.

"(c) For purposes of subsection (a)(3), the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of such sixty-day period."

§ 7300. Contracts for construction: profit limitation

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 50 App. section 1212.

§ 7304. Examination by board; unfit vessels stricken from Naval Vessel Register

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7305, 7306, 7307 of this title.

CHAPTER 639—UNITED STATES NAVAL OCEANOGRAPHIC OFFICE AND NAVAL OBSERVATORY

§ 7396. Naval Observatory: exchange of information with foreign offices

(a) The Secretary of the Navy may arrange to exchange data with foreign almanac offices to reduce the duplication of work in preparing the different national nautical and astronomical almanacs and make available for publication a larger amount of data useful to navigators and astronomers. Each such arrangement shall be made terminable on one year's notice.

[See main edition for text of (b)]

(As amended Sept. 8, 1978, Pub. L. 95-357, 92 Stat. 591.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-357 struck out "in the American Ephemeris and Nautical Almanac" following "for publication".

CHAPTER 641—NAVAL PETROLEUM RESERVES

Sec.
7432. Authorizations of appropriations.

AMENDMENTS

1979—Pub. L. 96-137, § 3(b)(2), Dec. 12, 1979, 93 Stat. 1062, in item 7432 substituted "Authorizations of appropriations" for "Naval petroleum reserve special account".

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 30 section 353; title 42 sections 6214, 7156, 7235.

§ 7421. Jurisdiction and control

TRANSFER OF FUNCTIONS

All functions vested by this chapter in the Secretary of the Navy relating to the administration over naval petroleum reserves numbered 1 (Elk Hills) and 2 (Buena Vista) located in California, naval petroleum reserve numbered 3 located in Wyoming, oil shale reserve numbered 2 located in Utah, and oil shale reserves numbered 1 and 3 located in Colorado, were transferred to, and vested in, the Secretary of Energy by Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565. See section 7156 of Title 42, The Public Health and Welfare.

§ 7422. Administration

[See main edition for text of (a) and (b)]

(c)(1) In administering Naval Petroleum Reserves Numbered 1, 2, and 3, the Secretary is authorized and directed—

[*See main edition for text of (A) to (D)*]

Any pipeline in the vicinity of a naval petroleum reserve not otherwise operated as a common carrier may be acquired by the Secretary by condemnation, if necessary, if the owner thereof refuses to accept, convey, and transport without discrimiation[1] and at reasonable rates any petroleum produced at such reserve. With the approval of the Secretary, rights-of-way for new pipelines and associated facilities may be acquired by the exercise of the right of eminent domain in the appropriate United States district court. Such rights-of-way may be acquired in the manner set forth in the Act of February 26, 1931, chapter 307 (46 Stat. 1421; 40 U.S.C. 258(a)), and the prospective holder of the right-of-way is "the authority empowered by law to acquire the lands" within the meaning of that Act. Such new pipelines shall accept, convey, and transport without discrimination and at reasonable rates any petroleum produced at such reserves as a common carrier.

[*See main edition for text of (2) and (3)*]

(As amended Dec. 12, 1979, Pub. L. 96–137, § 3(a), 93 Stat. 1061.)

AMENDMENTS

1979—Subsec. (c)(1). Pub. L. 96–137 struck out provision requiring that pipelines and associated facilities constructed at or procured for Naval Petroleum Reserve Numbered 1 pursuant to this subsection have adequate capacity to accommodate not less than three hundred fifty thousand barrels of oil per day and be fully operable as soon as possible, but not later than three years after the date of enactment of the Naval Petroleum Reserves Production Act of 1976.

TRANSFER OF FUNCTIONS

All functions vested by this chapter in the Secretary of the Navy relating to the administration of naval petroleum reserves numbered 1 (Elk Hills) and 2 (Buena Vista) located in California, naval petroleum reserve numbered 3 located in Wyoming, oil shale reserve numbered 2 located in Utah, and oil shale reserves numbered 1 and 3 located in Colorado, were transferred to, and vested in, the Secretary of Energy by Pub. L. 95–91, Aug. 4, 1977, 91 Stat. 565. See section 7156 of Title 42, The Public Health and Welfare.

§ 7425. Acquisition by condemnation and purchase

(a) Whenever the Secretary is unable to make arrangements he considers satisfactory for—

(1) exchanges of land or agreements for conservation authorized by section 7424 of this title; or

(2) contracts for joint, unit, or other cooperative plans with respect to lands or leases authorized by section 7426 of this title;

he may acquire, with the approval of the President, such privately owned lands and leases—

(1) by purchase, inside the naval petroleum reserves, or outside those reserves on the same geologic structure; and

(2) by condemnation, inside naval petroleum reserve numbered 1, or, if there is substantial drainage, outside that reserve on the same geologic structure.

[*See main edition for text of (b) and credits*]

CODIFICATION

Subsec. (a) is set out in this supplement to correct typographical error appearing in the main edition.

§ 7432. Authorizations of appropriations

(a) Funds for the following purposes may not be appropriated unless such appropriations have been specifically authorized by law:

(1) Exploration, prospecting, conservation, development, use, operations, and production of the naval petroleum reserves as authorized by this chapter; [1]

(2) Production (including preparation for production) as authorized by this chapter or as may be authorized after April 5, 1976.

(3) The construction and operation of facilities both within and outside the naval petroleum reserves incident to the production and the delivery of petroleum, including pipelines and shipping terminals.

Sums appropriated for such purposes shall remain available until expended.

(b) Contracts under this chapter providing for the obligation of funds may be entered into for a period of five years, renewable for an additional five-year period; however, such contracts may obligate funds only to the extent that such funds are made available in appropriation Acts.

(As amended Dec. 12, 1979, Pub. L. 96–137, § 3(b)(1), 93 Stat. 1061.)

AMENDMENTS

1979—Pub. L. 96–137 struck out provisions relating to the naval petroleum reserves special account.

ABOLITION OF NAVAL PETROLEUM RESERVES SPECIAL ACCOUNT

Section 3(c) of Pub. L. 96–137 provided that: "The naval petroleum reserves special account established by section 7432 of title 10, United States Code, as in existence on the day before the date of the enactment of this Act [Dec. 12, 1979], is abolished. Unappropriated balances of funds in the naval petroleum reserves special account on the date of the enactment of this Act shall be transferred on the books of the Treasury into miscellaneous receipts, and all moneys accruing to the United States after such date under chapter 641 of title 10, United States Code, shall be covered into the Treasury as miscellaneous receipts."

§ 7433. Disposition of royalties

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 16 section 470h; title 30 section 191; title 43 section 1601.

§ 7438. Rifle, Colorado, plant; possession, use, and transfer of

TRANSFER OF FUNCTIONS

The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

[1] So in original. Probably should read "discrimination".

[1] So in original. The semicolon probably should be a period.

CHAPTER 649—QUARTERS, UTILITIES, AND RELATED SERVICES

§ 7571. Quarters or other accommodations: to whom furnished

CHARGES FOR EXCESS ENERGY CONSUMPTION; DEPOSIT OF PROCEEDS; APPLICABILITY; IMPLEMENTATION

Assessment of members for excess energy consumption in military family housing facilities, see section 507 of Pub. L. 95-82, title V, Aug. 1, 1977, 91 Stat. 372, set out as a note under section 4593 of this title.

Subtitle D—Air Force

PART I—ORGANIZATION

CHAPTER 803—DEPARTMENT OF THE AIR FORCE

§ 8013. Under Secretary of the Air Force; Assistant Secretaries of the Air Force

There are an Under Secretary of the Air Force and three Assistant Secretaries of the Air Force in the Department of the Air Force. They shall be appointed from civilian life by the President, by and with the advice and consent of the Senate. One of the Assistant Secretaries shall be the Assistant Secretary of the Air Force for Manpower and Reserve Affairs. He shall have as his principal duty the overall supervision of manpower and reserve component affairs of the Department of the Air Force.

(As amended Nov. 9, 1979, Pub. L. 96-107, title VIII, § 820(d), 93 Stat. 819.)

AMENDMENTS

1979—Pub. L. 96-107 substituted "three" for "four".

CHAPTER 807—THE AIR FORCE

Sec.
8081. Assistant Surgeon General for Dental Services.

AMENDMENTS

1978—Pub. L. 95-485, title VIII, § 805(c)(2), Oct. 20, 1978, 92 Stat. 1622, added item 8081.

§ 8067. Designation: officers to perform certain professional functions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8036, 8081, 8208, 8209, 8296, 8297, 8306, 8307, 8549, 8579, 8848 of this title.

§ 8081. Assistant Surgeon General for Dental Services

There is an Assistant Surgeon General for Dental Services in the Air Force who is appointed by the Secretary of the Air Force upon the recommendation of the Surgeon General from officers of the Air Force above the grade of major who are designated as dental officers under section 8067(b) of this title. The term of office of the Assistant Surgeon General for Dental Services is four years but may be increased or decreased by the Secretary of the Air Force.

(Added Pub. L. 95-485, title VIII, § 805(c)(1), Oct. 20, 1978, 92 Stat. 1622.)

PART II—PERSONNEL

CHAPTER 831—STRENGTH

§ 8202. Air Force: officers in certain commissioned grades

INCREASE IN AUTHORIZED STRENGTH IN GRADES OF COLONEL AND LIEUTENANT COLONEL

Pub. L. 93-397, Aug. 29, 1974, 88 Stat. 795, as amended by Pub. L. 94-454, § 4, Oct. 2, 1976, 90 Stat. 1519; Pub. L. 95-377, § 1, Sept. 19, 1978, 92 Stat. 719, provided: "That beginning with October 1, 1974, through September 30, 1979, the columns under the headings 'For colonels' and 'For lieutenant colonels' contained in the table in section 8202(a) of title 10, United States Code [subsec. (a) of this section], are suspended. For such period such columns shall read as follows:

'For colonels	*For lieutenant colonels*
3,395	6,370
3,743	7,552
4,091	8,733
4,440	9,914
4,788	11,095
5,136	12,276
5,484	13,452
5,833	14,638
6,181	15,819
6,528	17,001
6,876	18,162
7,226	19,363
7,573	20,544
7,921	21,726'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8210, 8218 of this title.

§ 8218. Reserves: strength in grade; general officers in an active status

The authorized strength of the Air Force in reserve general officers in an active status, exclusive of those serving as adjutants general or assistant adjutants general of a State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia, those serving in the National Guard Bureau, and those counted under section 8202 of this title, is 157.

(As amended Pub. L. 96-107, title III, § 302(d), Nov. 9, 1979, 93 Stat. 806.)

AMENDMENTS

1979—Pub. L. 96-107 added provisions authorizing applicability of those officers counted under section 8202 of this title.

CHAPTER 835—APPOINTMENTS IN THE REGULAR AIR FORCE

§ 8313. Suspension of laws for promotion or mandatory retirement or separation during war or emergency

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 50 section 1651.

CHAPTER 863—SEPARATION OR TRANSFER TO RETIRED RESERVE

§ 8855. Retention in active status of certain officers until age 60

Notwithstanding any other section of this chapter except section 8846, the Secretary of the Air Force may, with the officer's consent,

retain in an active status any reserve officer of the Air Force who is designated as a medical officer, dental officer, veterinary officer, chaplain, Air Force nurse, or Air Force medical specialist, but not later than the date upon which he becomes 60 years of age.

(As amended Pub. L. 96-107, title IV, § 403(b), Nov. 9, 1979, 93 Stat. 808.)

AMENDMENTS

1979—Pub. L. 96-107 added reference to veterinary officer.

PART III—TRAINING

CHAPTER 901—TRAINING GENERALLY

§ 9315. Community College of the Air Force: associate degrees

TRANSFER OF FUNCTIONS

All functions of the Commissioner of Education of the Department of Health, Education, and Welfare, were transferred to the Secretary of Education by section 3441(a)(1) of Title 20, Education.

PART IV—SERVICE, SUPPLY, AND PROCUREMENT

CHAPTER 933—PROCUREMENT

§ 9540. Architectural and engineering services

[*See main edition for text of* (a) *and* (b)]

(c) Sections 305, 3324, 5101-5115, 5331-5338, 5341, 5342, and 7204 of title 5 and subchapter VI of chapter 53 of such title 5 do not apply to employment under this section.

(As amended Oct. 13, 1978, Pub. L. 95-454, title VII, § 703(c)(3), title VIII, § 801(a)(3)(I), 92 Stat. 1217, 1222.)

REFERENCES IN TEXT

Section 5337 of title 5, included within the reference to sections 5331 to 5338 of title 5 in subsec. (c), was repealed by Pub. L. 95-454, title VIII, § 801(a)(2), Oct. 13, 1978, 92 Stat. 1221.

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-454 added reference to subchapter VI of chapter 53 of title 5, and substituted "7204" for "7154".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 703(c)(3) of Pub. L. 95-454 substituting reference to section 7204 of title 5 for reference to section 7154 of title 5 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of Title 5, Government Organization and Employees.

Amendment by section 801(a)(3)(I) of Pub. L. 95-454 adding reference to subchapter VI of chapter 53 of title 5 effective on the first day of the first applicable pay period beginning on or after the 90th day after Oct. 13, 1978, see section 801(a)(4) of Pub. L. 95-454, set out as an Effective Date note under section 5361 of Title 5.

CHAPTER 937—UTILITIES AND SERVICES

§ 9593. Quarters: heat and light

CHARGES FOR EXCESS ENERGY CONSUMPTION; DEPOSIT OF PROCEEDS; APPLICABILITY; IMPLEMENTATION

Assessment of members for excess energy consumption in military family housing facilities, see section 507 of Pub. L. 95-82, title V, Aug. 1, 1977, 91 Stat. 372, set out as a note under section 4593 of this title.

CHAPTER 939—SALE OF SERVICEABLE MATERIAL

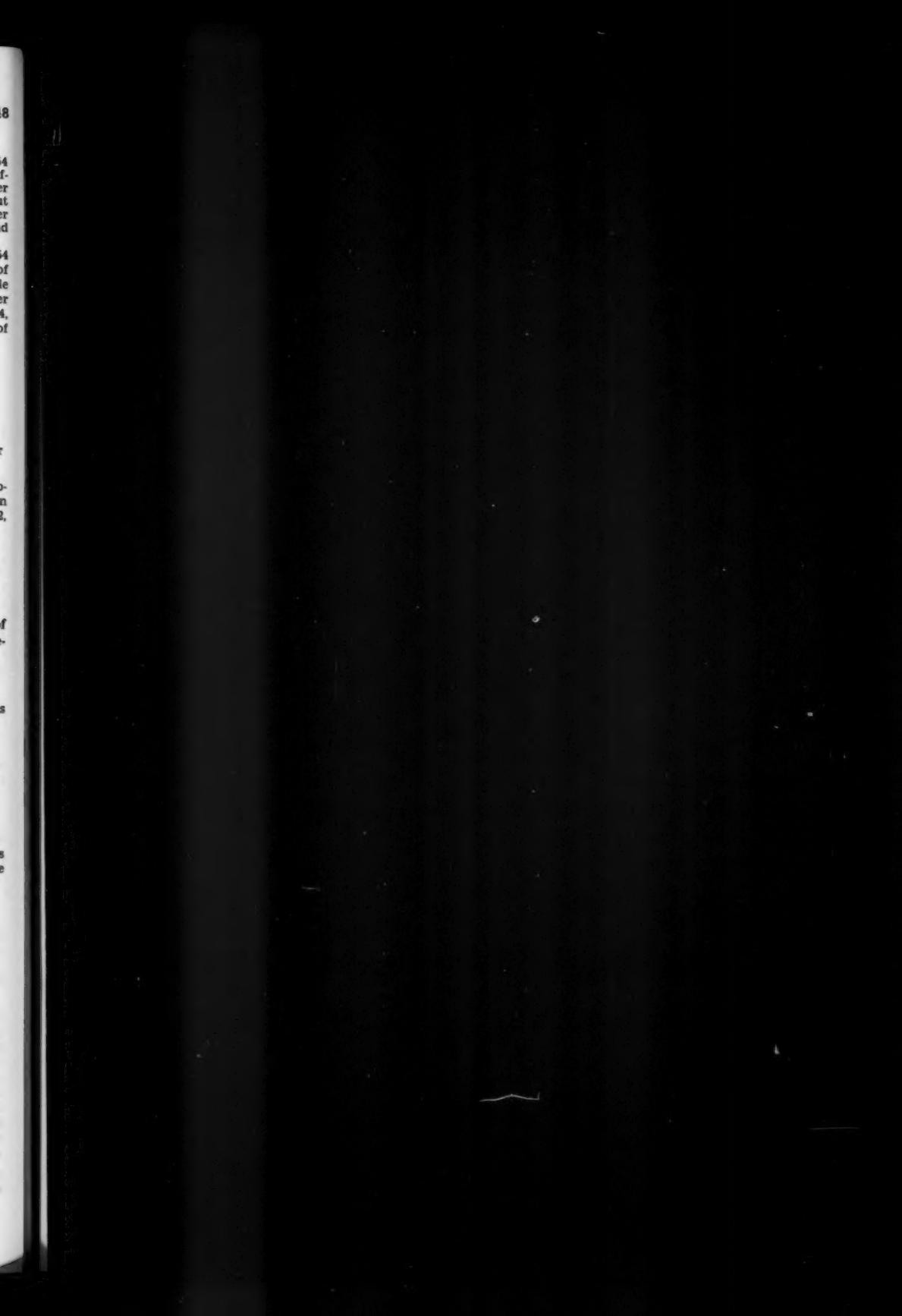
§ 9621. Subsistence and other supplies: members of armed forces; veterans; executive or military departments and employees; prices

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9629 of this title; title 37 section 1007.

CHAPTER 949—REAL PROPERTY

§ 9774. Construction: limitations

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2388 of this title; title 42 section 1592d; title 48 section 1409b; title 50 section 491.